

Title 12

PUBLIC ROADS AND PLACES

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Chapter 12.05

COUNTY PARK USE

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12.05.010 Title.

This chapter is known as the park use chapter of Lewis County. [Ord. 1157, 1998; Ord. 1130 § 1, 1993]

12.05.020 Definitions.

The following definitions shall apply in the interpretation and enforcement of this chapter:

(1) "County" means Lewis County government.

(2) "Person" means any individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state or any local governmental unit however designated.

(3) "Motorized vehicle" means every device capable of being moved by a mechanical device including, but not limited to, automobiles, motorcycles, radio-controlled airplanes and cars.

(4) "Nonmotorized vehicle" means every device capable of transporting an individual that is not powered by a mechanical device including, but not limited to, bicycles, skateboards, and roller skates.

(5) "Alcoholic beverages" includes the four common varieties of liquor, namely alcohol, spirits, wine and beer, and other varieties as defined under "Liquor" in RCW 66.04.010(15).

(6) "Small animals" means dogs, cats and other small, domesticated animals.

(7) "Large animals" means horses, cattle and other large, domesticated animals.

(8) "Park" means Lewis County park.

(9) "Fireworks" means any composition or device in a finished state containing any combustible or explosive substance for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation, or classified as common or special fireworks by the United States bureau of explosives or contained in the regulations of the United States department of transportation.

(10) "Firearm" means a weapon or device from which a projectile or projectiles may be fired by an explosive such as gunpowder.

(11) "Weapon" means any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, or any other object apparently capable of producing bodily harm, in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons.

(12) "Concession" means the selling, offering or renting of a product or service by other than Lewis County. [Ord. 1157, 1998; Ord. 1130 § 2, 1993]

12.05.030 Littering prohibited.

(1) No person shall throw, drop, deposit, discard or otherwise dispose of any waste

material in parks except in county-designated waste receptacles.

(2) Said receptacles are to be used only for waste material produced from park use and shall not be used for disposal of waste material accumulated in residences or places of business. [Ord. 1157, 1998; Ord. 1130 § 3, 1993]

12.05.040 Alcoholic beverages.

The consumption of alcohol is not permitted in public areas in accordance with RCW 66.44.100. This element of the chapter will go into effect January 1, 1994. [Ord. 1157, 1998; Ord. 1130 § 4, 1993]

12.05.050 Firearms and weapons.

It is unlawful for any person to discharge or display any firearm or weapon on park property. [Ord. 1157, 1998; Ord. 1130 § 5, 1993]

12.05.060 Hunting of game.

It is unlawful to hunt, trap, harass or injure game in any park. [Ord. 1157, 1998; Ord. 1130 § 6, 1993]

12.05.070 Signs, billboards, leaflets, etc.

Only information approved by the county may be posted or distributed in a park without a permit; except, candidates running for political office may distribute political campaign materials in a park without prior approval. [Ord. 1157, 1998; Ord. 1130 § 7, 1993]

12.05.080 Obeying posted park signs.

It is unlawful for any person to enter upon or use park property in a manner contrary to signs posted by the county. [Ord. 1157, 1998; Ord. 1130 § 8, 1993]

12.05.090 Fireworks.

Persons shall not carry or possess fireworks in a park. [Ord. 1157, 1998; Ord. 1130 § 9, 1993]

12.05.100 Park operating hours.

The operating hours of day-use parks are 8:00 a.m. to dusk seven days a week. Certain parks are only open on a seasonal basis. The specific hours of operation will be posted at the park. [Ord. 1157, 1998; Ord. 1130 § 10, 1993]

12.05.110 Animals.

(1) Small Animals. It is unlawful for any small animal to be allowed to run free in any park. The animal must be leashed at all times and the leash in control of a responsible individual of suitable age, discretion and capability to control the animal. The leash can be no longer than 10 feet. In no event shall any small animal be permitted on any bathing beach or in water adjacent thereto. A “guide dog” or “service dog”, as those terms are utilized in Ch. 70.84 RCW, or a police dog on duty are excepted from these regulations.

(2) Large Animals. It is unlawful to have any large animal outside of the designated parking area. Within the parking area, an animal must be leashed and under constant control of a responsible individual of suitable age, discretion and capability to control the animal. The leash can be no longer than 10 feet.

(3) Removal of Animal Waste Products. It is the responsibility of the individual controlling the animal to immediately and properly dispose of any animal solid waste product. Individuals requiring the services of a “guide dog” or “service dog”, as those terms are utilized in Ch. 70.84 RCW, are excepted from these regulations.

(4) Release of Animals, Fish or Fowl. It is unlawful to release any animal, fish or fowl, whether domestic, wild or exotic, in a park. The sole exception would be game fish released by the Washington State Department of Wildlife or the Washington State Department of Fisheries. [Ord. 1157, 1998; Ord. 1130 § 11, 1993]

12.05.120 Speed limits.

It is unlawful for any person to operate a motorized or nonmotorized vehicle at a speed in excess of 10 miles per hour on any roadway or parking lot within park boundaries, except when other speed limit is posted. [Ord. 1157, 1998; Ord. 1130 § 12, 1993]

12.05.130 Parking of vehicles - tow away.

(1) It is unlawful for any person to park or leave a vehicle in a manner prohibited by posted signs or that impedes traffic at a park, or to leave a vehicle in the park after closure time.

(2) All vehicles parked in violation of posted signs or park rules or policies are subject to impoundment at the sole expense of the owner of said vehicle. [Ord. 1157, 1998; Ord. 1130 § 13, 1993]

12.05.140 Vehicles.

(1) Motorized Vehicles. It is unlawful to have any motorized vehicle in any area of the park except the designated parking areas and roadways.

(2) Nonmotorized Vehicles. It is unlawful to operate or ride any nonmotorized vehicle in any area of the park except the designated vehicle parking areas and roadway. [Ord. 1157, 1998; Ord. 1130 § 14, 1993]

12.05.150 Concessions.

(1) The sale, offering or rental of any product or service within a park service by other than Lewis County is subject to the county's competitive bidding process.

(2) Any person desiring to engage in concessions within a park must contact the county with such request. [Ord. 1157, 1998; Ord. 1130 § 15, 1993]

12.05.160 Violation - penalties.

(1) Violations of LCC 12.25.030, 12.25.050 and 12.25.060 shall be subject to the penalties in LCC 1.20.020 and LCC 1.20.040.

(2) Violations of the sections not included in subsection (1) of this section are punishable by civil fine of \$50.00 payable to Lewis County, and imposed consistent with the provisions of LCC 1.20.040. [Ord. 1180 § 15, 2002; Ord. 1157, 1998; Ord. 1130 § 16, 1993]

12.05.170 Permits.

Permits for special events in park and recreation areas shall be obtained by application to the county in accordance with the following procedure:

(1) A person seeking issuance of a permit hereunder shall file an application stating:

(a) The name and address of the applicant;

(b) The name and address of the person, persons, corporation or association sponsoring the activity, if any;

(c) The day and hours for which the permit is desired;

(d) The park or portion thereof for which the permit is desired;

(e) Any other information reasonably necessary to a determination as to whether a permit should be issued hereunder;

(f) Variances required from park rules and regulations.

(2) Standards for issuance of a use permit shall include the following findings:

(a) That the proposed activity or use of the park will not unreasonably interfere with or detract from the general public's enjoyment of the park;

(b) That the proposed activity and use will not unreasonably interfere with or detract from the promotion of public health, welfare, safety and recreation;

(c) That the proposed activity or uses that are reasonably anticipated will not

include violence, crime or disorderly conduct;

(d) That the proposed activity will not entail extraordinary or burdensome expense on county sheriff operation; and

(e) That the facilities desired have not been reserved for other use on the date and hour requested in the application.

(3) Appeal.

(a) Within 10 days after the receipt of an application, the county shall notify an applicant in writing of its decision to grant or deny a permit; in the event of a denial the notification shall include the reason for the denial. Any aggrieved person shall have the right to appeal such decision to the county.

(b) The appeal shall be held before the Lewis County Hearing Examiner under Chapter 2.25 LCC; EXCEPT, that the Hearing Examiner shall be permitted to conduct an open record proceeding, and receive additional testimony and evidence from the parties thereto. Such person shall file a Petition for such a hearing and pay the appellate fee in accordance with the Examiner chapter within ten days of entry of the decision.

(c) At the conclusion of the hearing, the Examiner shall determine whether the decision was proper and provide both parties with a copy of its determination, setting forth in writing the reasons for the determination reached. The Examiner may reverse or uphold the decision in whole, or may uphold in part and reverse or modify the decision in part.

(d) If the decision is upheld, then any such costs and the expenses of the hearing shall be assessed against the appellant. If any portion of the decision is reversed or modified, then the appellant shall bear no further costs and expenses.

(4) A permittee shall be bound by all park rules and regulations and all applicable ordinances fully as though the same were inserted in said permits.

(5) An applicant for a permit may be required to submit evidence of liability insurance covering injuries to members of the general public arising out of such permitted activities in such amounts as may be from time to time determined prior to the commencement of any activity or issuance of any permit.

(6) Revocation. The county shall have the authority to revoke a permit upon a finding of violation of any rule or ordinance or upon good cause shown. Such revocation may be appealed in accordance with the procedure set forth in subsection (3), above. [Ord. 1157, 1998; Ord. 1130 § 17, 1993]

Chapter 12.10

OVERLEGAL MOVEMENT OF VEHICLES

Sections:

- 12.10.010 Definitions.
- 12.10.020 Scope and construction of terms.
- 12.10.030 Amendments.
- 12.10.040 Movements unlawful.
- 12.10.050 Permits required - Dimensions or weights.
- 12.10.060 Permits required - Equipment.
- 12.10.070 Exemptions for farm equipment.
- 12.10.080 Special permits - Fees.
- 12.10.090 Special permits - Issuance.
- 12.10.100 Special permits - Conditions.
- 12.10.110 Overlegal movement regulations.
- 12.10.120 Escort vehicles - When required.
- 12.10.130 Escort vehicles - Type and equipment.
- 12.10.140 Flags and flagging personnel.
- 12.10.150 Construction equipment - Special allowance.
- 12.10.160 Violation - Penalties.

12.10.010 Definitions.

(1) “Reducible overlegal vehicle” means any vehicle or vehicle combination, with or without load, which exceeds those maximum limitations specified by Washington State law as are set forth in LCC 12.10.050 which can be reasonably reduced in size or weight, dismantled or disassembled in a manner that will conform to law without a special permit.

(2) “Nonreducible overlegal vehicle” means any vehicle or vehicle combination, with or without load, which exceeds those maximum limitations specified by

Washington State law as are set forth in LCC 12.10.050 which cannot be reasonably reduced in size or weight, dismantled or disassembled in a manner that will conform to law without a special permit, or is otherwise not in conformity with the provisions of this chapter and/or Washington State vehicle laws.

(3) “County road” means every public highway or part thereof maintained by the county public works division, lying outside the limits of incorporated cities and towns, and which has not been designated as a state highway as that term is defined in RCW 46.04.560 as now or hereafter amended.

(4) “Gross weight” means the total vehicle weight including load. [Res. 99-515, 1999*; Ord. 1157, 1998; Ord. 1070 § 1, 1981]

12.10.020 Scope and construction of terms.

Terms used in this chapter shall have that meaning given to them in this chapter and Ch.s 46.04 and 46.44 RCW, and Ch. 468-38 WAC, and where not defined herein shall have that meaning clearly indicated by the context in which such term is used. [Ord. 1157, 1998; Ord. 1070 § 2, 1981]

12.10.030 Amendments.

All Washington State laws (RCW) and regulations (WAC) referred to herein shall apply as now or hereafter amended on the date the action or violation occurs. [Ord. 1157, 1998; Ord. 1070 § 3, 1981]

12.10.040 Movements unlawful.

(1) It shall be unlawful for any nonreducible overlegal vehicle to travel any county road in Lewis County without an overlegal special permit issued by the Lewis County public services department or its authorized designee, or a valid state overlegal special permit issued by the Washington State Department of Transportation which has been

countersigned or otherwise validated for movements on county roads by said public works department, its designee or other authorized county office.

(2) It shall be unlawful for any reducible overlegal vehicle to travel any public road or highway in Lewis County lying outside the corporate limits of incorporated cities and towns without a valid county or Washington state overlegal special permit.

(3) It shall be unlawful for anyone applying for an overlegal special permit from Lewis County to misrepresent the size or weight of a vehicle or vehicle combination, with or without load, for which such permit is being sought, or any other information relevant to the issuance of such permit. Any overlegal special permit issued by Lewis County as a consequence of such misrepresentation shall be invalid. [Res. 99-515, 1999*; Ord. 1157, 1998; Ord. 1070 § 4, 1981]

12.10.050 Permits required - Dimensions or weights.

An overlegal special permit shall be required for movement on any Lewis County road when the nonreducible overlegal vehicle moved has dimensions or weights in excess of those maximums specified by Washington State law as are set forth in the following sections of the Revised Code of Washington:

(1) Outside width limit - RCW 46.44.010.

(2) Maximum height - Impaired clearance signs - RCW 46.44.020.

(3) Maximum length - RCW 46.44.030.

(4) Maximum - Front and rear protrusions - RCW 46.44.034.

(5) Maximum gross weights - RCW 46.44.041 and 46.44.042. [Ord. 1157, 1998; Ord. 1070 § 5, 1981]

12.10.060 Permits required - Equipment.

An overlegal special permit will be required for movement on any Lewis

County road when the vehicle, or vehicle combination, with or without load, moved:

(1) Lacks brakes and exceeds 3,000 pounds gross weight; for example, scrapers, crushing plants, generators, etc.; or

(2) Is equipped with steel wheels, tracks, pads, lugs or skids; or is not in conformity with state of Washington motor vehicle laws or Lewis County regulations. [Ord. 1157, 1998; Ord. 1070 § 6, 1981]

12.10.070 Exemptions for farm equipment.

No overlegal special permit shall be required for the movement on county roads of self-propelled, hauled or towed farm implements; providing that such equipment would also be exempt from requiring an overlegal special permit issued by the State Department of Transportation if moved on a state highway under provisions of RCW 46.44.130 and regulations enacted pursuant thereto; providing further that all such movements on county roads so exempt from special permit shall be subject to the same conditions, restrictions and requirements they would be subject to if moved on a two-lane state highway without a special permit and providing further, that the exemption herein for hauling such farm implements shall not apply to persons other than the owner/operator thereof. [Ord. 1157, 1998; Ord. 1070 § 7, 1981]

12.10.080 Special permits - Fees.

(1) The fee for processing an application for overlegal special permits shall be those fees as are set forth in RCW 46.44.0941, as now or hereafter amended, such fee shall be paid to the Lewis County public works department.

(2) Refunds may be made only under the following circumstances:

(a) A permit issued in consequence of error, either by fact or of law;

(b) The public works department has received an amount in excess of the required permit fee;

(c) The public works department has been notified, prior to the expiration date of the permit, that unusual circumstances which render a proposed move impractical or impossible have developed. This must be substantiated, in writing, to the satisfaction of the public works department.

(3) No fee shall be required for a return trip when authorized by overlegal special permit; provided, the return trip is within 48 hours of the initial movement and the movements are during daylight hours.

(4) Where an overlegal movement will travel on both state highways and Lewis County roads and applicant has a valid permit issued by the Washington State Department of Transportation, the public works department or authorized designee shall validate said permit for movements on county roads without a fee, except where authorized herein, by countersigning the permit or, if by phone, issuing a county permit number, but only where the proposed movement will otherwise be permitted by this chapter. Such applicant must provide a State Department of Transportation permit number, other pertinent information as requested and request specified route permission on the Lewis County road(s) to be traveled; provided, however, that log trucks licensed by special permit pursuant to RCW 46.44.047, and vehicles issued annual additional tonnage permits pursuant to RCW 46.44.095 shall be permitted to operate on the county roads of Lewis County without such validation, or route clearance, providing they are otherwise in compliance with all Lewis County regulations and Washington State motor vehicle laws.

(5) Nonsalaried agents of Lewis County appointed by the public works director or his designee to issue Lewis County overlegal special permits and to validate Washington State overlegal special permits for

movements on county roads shall be authorized to charge, collect and retain such fee from permittee as may be determined by the public works director or his designee, not exceeding \$2.00 per permit, for each state overlegal special permit agent may validate for movements on county roads.

(6) The public works director or his designee is hereby authorized to enter into agent agreements for the purpose of establishing agent fees and other matters of a contractual nature deemed necessary by the public works director or his designee to properly administer the requirements of this chapter by agents. [Res. 99-515, 1999*; Ord. 1157, 1998; Res. 82-91 §§ 1, 2, 1982; Ord. 1070 § 8, 1981]

12.10.090 Special permits - Issuance.

Overlegal special permits can be applied for at the Lewis County public to issue such permits by the public works director or his designee during the hours from 8:00 a.m. to 5:00 p.m., Monday through Friday. Where a state highway permit holder must make an emergency overlegal movement and is unable to contact the public works director or his designee, the Lewis County sheriff's office may authorize such a move, upon the applicant's providing the sheriff's office with the State Department of Transportation permit number and all pertinent information in regard to such movement. Such permittee shall comply with State and Lewis County regulations for pilot cars, other escort vehicles, flagging personnel, and utility company notifications when and where needed prior to leaving any state highway and when traveling upon Lewis County roads. [Res. 99-515, 1999*; Ord. 1157, 1998; Ord. 1070 § 9, 1981]

12.10.100 Special permits - Conditions.

(1) The overlegal special permit as issued may carry requirements and conditions which address identifiable hazards or potential road damage.

(2) Convoy Movements. An overlegal special permit may permit movement of vehicles in convoy; provided, such authorization is so specified on the permit; and provided, that no such permit shall allow the convoy movement of those vehicles required by this chapter to have pilot cars.

(3) Hold Harmless. All overlegal special permits issued by Lewis County shall be issued on the condition that the permittee shall be solely responsible and liable for any accident, damage or injury to any person or property resulting from the operation of the overlegal movement covered by permits on Lewis County roads and that the permittee shall hold blameless and harmless and shall indemnify Lewis County, its officers, agents and employees against any and all claims, demands, loss, injury, damage actions and cost of actions whatsoever, which they or any of them may sustain by reason of the acts, conduct, or operation of the permittee in connection with the movement covered by such permits issued by Lewis County.

(4) No special permit issued by Lewis County shall be valid for state highways or for any overlegal movements within the corporate limits of any city or town.

(5) Permit Maximums. No overweight permit shall be issued for the movement of any vehicle or combination of vehicles on any county road which exceeds the gross weight limits established as maximums for special permits as are set forth in RCW 46.44.091; provided, all special consideration permitted by subsection (4) of said RCW shall be by the county public works department; and providing further, subsection (6) is not adopted.

(6) Loading Restrictions and Requirements. Vehicles moving on county roads by special permit shall adhere to those loading restrictions and requirements required by WAC 468-38-370.

(7) Brakes - Requirements. Every motor vehicle or combination of motor drawn

vehicles moving on county roads by special permit shall be capable, at all times and under all conditions of loading, of being stopped on a dry, smooth, level road free from loose material, upon application of the service brake, within a distance of 50 feet decelerating from 20 m.p.h.

(8) Lights - Stop and Turn Signals. All overlegal vehicles moving on county roads by special permit shall adhere to those stop and turn signal requirements as are set forth in RCW 46.37.200.

(9) Safety Chains and Devices. Special permits shall not be valid for the operation of any vehicle upon the county roads of Lewis County unless the load thereon is securely fastened and protected by safety chains or other device. Dragging of load on the roadway will not be permitted. Vehicles with a boom or structural erection member attached thereto must have the boom or member secured in such a manner that it will not elevate or sway while in transportation.

(10) Drawbar - Towlines. The drawbar or other connection between vehicles in combination moving on county roads by special permit shall adhere to those drawbar and towline requirements as are set forth in RCW 46.44.070.

(11) Signs - Two-Way Radio. All overlegal vehicles moving on county roads by special permit which, by this chapter, require escort vehicles shall adhere to those sign and two-way radio requirements as are set forth in WAC 468-38-190 and 468-38-210.

(12) It shall be the responsibility of all applicants applying for an overlegal special permit to provide those county personnel processing such permit with all information relevant to the proposed move and show that the vehicle, vehicle combination or load is properly licensed and cannot be reasonably reduced in size or weight, dismantled or disassembled in a manner that will conform to law without a special permit. [Res. 99-

515, 1999*; Ord. 1157, 1998; Ord. 1070 § 10, 1981]

12.10.110 Overlegal movement regulations.

(1) Except as specified in the permit, all requirements of the state of Washington motor vehicle laws shall be obeyed during any overlegal movement on Lewis County roads.

(2) All overlegal movements on Lewis County roads must be made during daylight hours pursuant to WAC 468-38-260 & -290, unless during a period deemed an emergency and/or upon approval of the public works department.

(3) All overlegal movements on county roads by overlegal special permit shall comply with posted road and bridge restrictions on Lewis County roads, and with any and all other restrictions pertaining to overlegal movements on county roadways and bridges as may be specified in such permit by the public works department.

(4) Except where applicable law or regulation specifies a lower speed, the maximum speed permitted for any overlegal vehicle moving on Lewis County roads will be 45 miles per hour.

(5) No overlegal special permit shall be valid during adverse weather conditions, hazardous road conditions or whenever inclement weather reduces visibility to less than 1,000 feet.

(6) No overlegal movement will be permitted on Lewis County roads during such time or on such days when increased traffic may be anticipated over the route to be traveled, unless during a period deemed an emergency and/or upon approval of the public works department.

(7) Overlegal movements for which an overlegal permit is required shall not be permitted on Lewis County roads on Sundays after 12:00 noon, and the following holidays: Memorial Day, Independence Day, Labor Day, Thanksgiving, Christmas,

and New Year's Day, except that the public works department may approve such movements in certain areas or at certain times of the day where traffic flow is minor, or where such movement will not constitute an endangerment to the traveling public.

(8) The permittee shall have a duty to notify each utility company under whose lines an overheight load or vehicle shall pass and not clear prior to such movement on county roads and shall be responsible for any damages to overhead structures.

(9) The permittee shall turn off the roadway wherever sufficient area for a safe turn-out exists to permit accumulated traffic exceeding four motor vehicles to proceed past the overlegal movement.

(10) During periods when road restrictions are in effect on Lewis County roads, no overlegal movement of any kind will be permitted without the approval of the public works department. [Res. 99-515, 1999*; Ord. 1157, 1998; Res. 82-361, 1982; Ord. 1070 § 11, 1981]

12.10.120 Escort vehicles - When required.

(1) When vehicle, vehicles or load is over 11 feet in width, two escort cars (one front and one rear) are required when the county road to be traversed is a two-lane road.

(2) When overall length of load, including vehicles, exceeds 100 feet or when rear overhang of load from the last axle exceeds one-third of total length, one escort car or, by express authority set forth in the permit, a riding flag person will be required on two-lane and three-lane highways.

(3) When in the opinion of the public works department escort cars are necessary to protect the traveling public, for any overdimension and/or overweight move either across, upon, or along a county road, escort cars may be required as a condition of issuance of the permit.

(4) One or more escort vehicles may be required in addition to the two regular pilot cars to aid as circumstances may require for traffic control for the protection of motorists, pedestrians or property in the vicinity of identifiable hazards due to traffic conditions, terrain or location. [Res. 99-515, 1999*; Ord. 1157, 1998; Res. 90-173, 1990; Ord. 1070 § 12, 1981]

12.10.130 Escort vehicles - Type and equipment.

(1) Escort vehicles shall be of a type and operated in a manner as required by WAC 468-38-110.

(2) Escort vehicles shall be equipped in a manner as required by 468-38-170 and 468-38-210. [Ord. 1157, 1998; Ord. 1070 § 13, 1981]

12.10.140 Flags and flagging personnel.

Flags shall be a type required by WAC 468-38-140. A flag person shall meet those qualifications and perform those duties required by WAC 468-38-150. [Ord. 1157, 1998; Ord. 1070 § 14, 1981]

12.10.150 Construction equipment - Special allowance.

Vehicles equipped with large pneumatic tires may be granted a special permit exceeding axle limits; provided they meet those tire size requirements contained in subsection (3) of RCW 46.44.091. [Ord. 1157, 1998; Ord. 1070 § 15, 1981]

12.10.160 Violation - Penalties.

Violation of any provision of this chapter shall be a traffic infraction and shall be subject to the monetary penalty in LCC 1.20.020 and LCC 1.20.040. [Ord. 1180 § 16, 2002; Ord. 1157, 1998; Ord. 1070 § 17, 1981]

*[Codifier's Note: The department of public works by Resolution is currently assigned the duties of the former department of public services.]

Chapter 12.12

ADMINISTRATIVE EASEMENTS OF NECESSITY ALONG UNIMPROVED ROADS

Sections:

- 12.12.010 Definitions.
- 12.12.020 Easement of Necessity requirement, and prior licensing and permit expiration.
- 12.12.030 Limited and extended Easements of Necessity.
- 12.12.040 Easement of Necessity application.
- 12.12.050 Easement of Necessity approval.
- 12.12.060 Easement of Necessity administration and appeal.

12.12.010 Definitions.

(1) "Administrator" means the County Engineer, or his/her designee.

(2) "Aggrieved Party" means a property owner eligible hereunder for notice of the filing of an application for easement of necessity.

(3) "Department" means the County Department of Public Works.

(4) "Development approval" means the granting of any County building permit or Board of Health permit, or which constitutes a 'land use decision' as defined in Ch. 2.25 LCC.

(5) "Easement of Necessity" means a permissive, administrative grant by the County, pursuant to the provisions of RCW 36.75.040(5) and this Chapter, to permit an abutting property owner (or a non-abutting property owner with recorded access rights across an abutting property) to temporarily improve and utilize an unused or unimproved county roadway for purposes of ingress and egress to the abutting property. An "easement of necessity", as used hereunder, shall not be construed as either a

‘way of necessity’ as provided for in Ch. 8.24 RCW, or an ‘easement implied from necessity’ as created by courts of equity under state property law principles.

(6) “Extended Easement of Necessity” means an easement of necessity authorizing the use of the county right-of-way for a residential-only purpose and for a period of time exceeding one year in duration.

(7) “Limited Easement of Necessity” means an easement of necessity authorizing the use of the county right-of-way for any designated purpose and for a period of time limited to one year or less. [Ord. 1165 § 1, 1999]

12.12.020 Easement of Necessity requirement, and prior licensing and permit expiration.

(1) Unused or non-maintained county road rights-of-way shall not be privately improved or used for access purposes by abutting or non-abutting properties (excepting public properties), nor shall any development approvals necessitating such road improvement or access authority be granted, unless an administrative easement of necessity has heretofore been granted pursuant to this chapter.

(2) Not later than 180 days after the effective date of these regulations, the holders of valid licenses and permits issued pursuant to Resolution 81-78 shall be required to seek an easement of necessity from the County. After said date, said licenses and permits shall be considered null and void, EXCEPTING, the requirements of said licenses and permits relating to construction, compliance with federal, state and local regulations, and indemnification of the access arising from a former license and permit, and to the requirements of Resolution 81-78 relating to road improvement district formation and property owner waivers previously accepted by said licensees and permit holders shall survive

such termination, and the same shall be incorporated by reference within any easements of necessity granted to such licensees and permit holders. [Ord. 1165 § 2, 1999]

12.12.030 Limited and extended Easements of Necessity.

(1) Limited easements of necessity shall be processed and reviewed in the same manner as extended easements of necessity.

(a) The limited easement of necessity shall state on its face that the intended use of the County right-of-way is for non-residential purposes.

(b) The limited easement of necessity may require construction and restoration of the right-of-way to County-prescribed standards based on the nature and duration of the specific use, and subject to Department inspection. In addition, the Department shall set conditions to assure the compliance with other County plans, policies, standards and regulations. Such conditions may require performance in excess of then-existing County road standards.

(c) The easement grantee shall assume sole responsibility for the safe and adequate operation and maintenance of any improvements to the county right-of-way during the period of time the easement of necessity is in effect.

(d) The easement grantee may apply for a single, one year extension to such easement of necessity: limited, upon written application for an extension, payment of the fees, and being found to have fully complied with the conditions and requirements of the original easement approval. The application for extension may only be made after the first six months of the original permit life.

(e) No parcel (or later-divided portions of such parcel) shall be eligible for more than one limited easement of necessity in any two year period, nor eligible for more

than one limited easement of necessity with one extension in any three year period.

(2) Extended easements of necessity shall be processed and reviewed in the same manner as limited easements of necessity.

(a) The extended easement grantee shall be required to construct a road to County-prescribed standards which may include full compliance with then-existing County road standards, and may be required to post financial guarantees for construction, restoration and maintenance. Construction work and all restoration work required by the extended easement of necessity shall be completed within one year of the issuance of approval; failure to satisfactorily complete such work within the time period prescribed by the administrator shall immediately cause the repeal of the easement grant. The Department shall set conditions to assure compliance with other adopted plans, County policies, and regulations. Such conditions may require performance in excess of then-existing County road standards.

(b) The Department shall place and maintain permanent sign(s) denoting the end of the county-maintained road, and the existence of a privately maintained easement of necessity. The extended easement grantee shall reimburse the Department at a standardized rate of labor and materials for placement of such sign(s), as a condition of approval and use of the right-of-way.

(c) The extended easement grantee shall have sole responsibility for the safe construction, operation and maintenance of any improvements to the county right-of-way, until such time as the improvements are officially accepted for maintenance by Lewis County or are removed pursuant to the expiration, surrender or repeal of the extended easement. [Ord. 1165 § 3, 1999]

12.12.040 Easement of Necessity application.

(1) All applicants for an easement of necessity must file an application form, provided by the Lewis County Public Works Department, which shall be fully completed, signed and notarized. The application form shall contain the following information:

(a) The name, mailing address, and telephone number of the applicant;

(b) The names and addresses of all legal owners of the parcel for which the easement of necessity is requested, and that of any engineer, developer or surveyor who is involved with the parcel when this request is made in conjunction with any on-going or proposed development of the parcel;

(c) The assessor's tax number for the parcel and a copy of the assessor's map showing all other abutting tax parcels for the full length of the unimproved county right-of-way affected by the easement;

(d) Existing and proposed land uses for the parcel and the nature of the easement of necessity sought (extended or limited); if the approval is sought for a parcel not currently having received approvals by the Department of Community Development for zoning, building, sewage and water availability, any easement of necessity granted for said parcel shall be considered limited to non-residential use until such approvals have been received and shall specifically state such limitations on use on the face of the easement of necessity;

(e) Disclosure and documentation of any other titled, easement, or prescriptive access right, or any legal access rights to/from the applicant's parcel, other than access along the unimproved county right-of-way;

(f) A certification that the applicant has personally or by certified mail/return receipt notified all owners of property abutting on each side of the right-of-way subject to the easement of necessity, which notice shall inform the property owners of

their rights to object and to request a public hearing on the easement of necessity. Any objections to the easement of necessity by such property owners shall be stated, along with the manner in which the applicant proposes to resolve the objections, and any request for public hearing must be served upon the administrator within (20) days of acceptance of a completed application;

(g) An environmental checklist pursuant to Ch. 17.10 LCC, if deemed necessary by the Department for the easement of necessity or associated development approvals;

(h) For extended easements of necessity, a completed "Covenant" running with the land and for purposes of recording for the benefit of Lewis County, which shall be recorded by a successful applicant with the Lewis County Auditor and contain:

(i) A legal description of the lot or parcel to be served by the easement of necessity;

(ii) A statement regarding the nature and purpose of access provided by said easement of necessity to such parcel, including that the easement of necessity does not create or convey any adverse or vested right, or equitable or legal interest in any county right-of-way or in the underlying fee to such right-of-way;

(iii) A statement that the owners (and successors and assigns) of the parcel will not oppose participation in a county road improvement district, if formation of such a district is deemed in the public interest by the County;

(iv) A statement that responsibility for the maintaining an improved roadway in a reasonably safe condition rests jointly and equally upon all easement of necessity holders along said roadway;

(v) A prohibition against subdividing or segregating such parcel(s) without obtaining either binding site plan, plat or subdivision approvals thereto or, if

exempt from site plan, platting or subdivision regulation, an approval from the administrator to use such access for any additional parcels being created or designated;

(vi) A statement that this covenant is binding on the successors and assigns of the owners; and

(vii) The notarized signatures of the owners of record of such parcel.

(i) Where the applicant claims that cost of providing access by another titled, easement, or prescriptive access right, or any other legal access right to/from the parcel would prove prohibitive, the applicant must submit a map and documentation for the parcel clearly identifying and detailing such other legal access right and all relevant topographical features such as ravines, hills, streams, wetlands, and similar physical barriers which impact that right; contours shall be provided when requested by the administrator in making a final determination.

(2) Applications for an easement of necessity shall be accompanied with a processing fee in the amount of \$150.00. Requests for extension of limited easements of necessity shall be accompanied with a processing fee in the amount of \$50.00. These fees shall be codified within a Public Works Fees Schedule, Chapter 18.10 of Title 18 of the Lewis County Code, and this section amended during codification to reflect this action.

(3) Applications for an easement of necessity shall not be deemed complete until all relevant and requested information is submitted to the Public Works Department and all fees are paid.

(4) Upon accepting a complete application, the Public Works Department shall:

(a) Affix a file number and date of receipt to the application and shall forward copies to the appropriate sections of the

Community Development Department, Public Works Department, the Assessor, and any other public agencies which may have an interest in the proposed easement of necessity.

(b) Verify that the applicant has certified that all owners of the property abutting on each side of the right-of-way have been contacted.

(5) Upon receipt of the application, the appropriate departments, officials and agencies shall, within 20 days, return their written comments to the administrator, whereupon:

(a) The Administrator shall tender a decision on the application without public hearing by means of an Engineer's Report, approving or denying the application, or shall return the application to the applicant for modification or correction, all within 30 days; EXCEPTING, where an environmental review must be completed for issuance of the Report or where the applicant consents in writing to an extension of time for completion of the Report, additional time shall be allowed.

(b) When a public hearing on the application is: 1) necessitated by operation of law, 2) requested by either the applicant(s) or by an aggrieved party, within 20 days of application acceptance; or 3) required by act of consolidation of the easement of necessity with development permit reviews pursuant to the Local Project Review Act of Ch. 36.70B RCW, then the Engineer's Report shall be deemed as only recommendation, and a final decision approving or denying the application shall be made in conjunction with said development permits review by the County Hearings Examiner, pursuant to Ch. 2.25 LCC. [Ord. 1165 § 4, 1999]

12.12.050 Easement of Necessity approval.

(1) The administrator shall find that the easement of necessity for ingress and egress

to the named property is necessary either on the basis of a lack of other legal means of access to the parcel or that the cost of providing access by any other titled, easement, or prescriptive access right, or any other legal access to the parcel would prove prohibitive.

(2) When considered necessary by the administrator to adequately define the limits of County right-of-way and the proposed easement of necessity, the applicant shall cause said right-of-way and or easement to be surveyed by a licensed land surveyor. Such survey shall be recorded in accordance with statute. An applicant shall be required to deed additional right-of-way across property under his authority when necessary to fulfill the minimum road right-of-way width/alignment prescribed by RCW 36.85.010.

(3) The easement of necessity shall specify minimum improvements required by the administrator in accordance with Department-prescribed standards. Construction of such improvements to the satisfaction of the administrator shall be completed prior to issuance any development approvals associated with said parcel. The owner(s) of said parcel shall be responsible for notifying the administrator of completion of the improvements and for requesting a verifying inspection.

(4) An easement of necessity may require construction and restoration of the right-of-way to then-existing County standards based on the nature and duration of the specific use, and subject to Department inspection. In addition, the administrator shall set conditions to assure the compliance with County plans, policies, standards and regulations. Such conditions may require construction and performance in excess of adopted County road standards.

(5) An easement of necessity shall contain a statement by the administrator regarding the disposition of timber, soil, rock, vegetation, or other materials within the right-of-way.

Such materials shall be disposed of in accordance with the directions of the administrator and the abutting property owners and/or the county engineer. Any affected fences, trees, landscaping or any improvements of abutting landowners which are located within the right-of-way shall be removed or relocated only in accordance with the directions of the administrator.

(6) Every easement of necessity shall state on its face that any county right-of-way improved pursuant to this chapter shall be open for general use by the traveling public, except where otherwise posted by the County. [Ord. 1165 § 5, 1999]

12.12.060 Easement of Necessity administration and appeal.

An easement of necessity applicant or an aggrieved party may appeal the action of the administrator in denying conditions or otherwise acting upon an easement of necessity provided that a written request for reconsideration must first be filed with the administrator within 10 days of the action complained of. Any request for reconsideration shall state what action is being questioned and the reason for the disagreement. Upon receipt of this request, the administrator may choose to affirm, reverse, or modify his/her prior action. Notice of the administrator's response shall be mailed to the applicant's last known address within 10 working days of the receipt of the request for reconsideration. The administrator's action may thereafter be appealed to the county hearings examiner within 10 working days of the date of mailing of the response from the administrator, pursuant to Ch. 2.25 LCC. Applications reviewed by the hearing examiner under LCC 12.12.040, above, shall be appealed in accordance with Ch. 2.25 LCC. The hearing examiner may sustain, reverse, or modify the action of the administrator. [Ord. 1165 § 6, 1999]

Chapter 12.15

ROAD VACATIONS

Sections:

- 12.15.010 Notice.
- 12.15.020 Appraisal - By county.
- 12.15.030 Appraisal - By property owner.

12.15.010 Notice.

Prior to the vacation of any county road in which Lewis County's property interest is fee simple, the following steps shall be taken in addition to those vacation procedures required by state law:

(1) A notice of any such proposed vacation shall be routed through the Lewis County departments of public services and community services so as to determine whether such right-of-way is surplus to the needs of Lewis County.

(2) An appraisal shall be made by the Lewis County public works division appraiser or such other appraiser as the county deems appropriate to determine the value of the right-of-way proposed to be vacated.

(3) Should the abutting property owners desire to obtain the land within the road right-of-way, such owners may, prior to action on the vacation, agree to compensate Lewis County for such right-of-way in the amount appraised and upon action by the county, tender such amount in exchange for a quit claim deed to that portion of the land within the right-of-way to which they are abutters. Where there is no agreement by the abutting land owner to purchase the right-of-way land prior to county action on the vacation, the land may be disposed of by the county only in a manner consistent with Chapter 3.30 LCC, as now or hereafter amended. [Ord. 1157, 1998; Ord. 1072 § 1, 1982]

12.15.020 Appraisal - By county.

(1) Prior to the vacation of any county road in which Lewis County's property interest is for road purposes, whether acquired through prescription, or by waiver, easement or deed, the following steps shall be taken in addition to those vacation procedures as required by state law:

(a) A review of the county road records shall be made by the county engineer as to the extent of public expenditures made in the acquisition, improvement or maintenance of the road proposed to be vacated and a report of his findings thereon filed with the Lewis County board of county commissioners;

(b) An appraisal shall be made by the Lewis County engineering section appraiser or such other appraiser as the county deems appropriate to determine the value, if any, of the county's interest in the right-of-way.

(2) If the right to receive compensation is not claimed by Lewis County as a condition precedent to the vacation of any such road right-of-way, the vacation may proceed pursuant to the provisions of state law; if the right to compensation is claimed, the following additional step shall be made:

(a) Lewis County shall secure a signed statement from the abutting property owners to the right-of-way proposed to be vacated, agreeing to compensate Lewis County, in the amount appraised, for its vacation of interest in that portion of right-of-way to which they are abutters; providing however, that Lewis County may decline to vacate the road until it receives all such compensation. [Ord. 1157, 1998; Ord. 1072 § 2, 1982]

12.15.030 Appraisal - By property owner.

(1) Any property owner who favors the proposed vacation but is not satisfied with the county's appraisal, may elect to have a certified appraiser of his own choosing appraise the value of that portion of right-of-

way abutting his property; providing, that such second appraisal shall be paid for by the property owner; and providing further, that Lewis County shall have the right to consider, accept or reject any such second appraisal.

(2) If agreement on value is not reached after the second appraisal, Lewis County may withdraw from sale or decline to vacate the right-of-way. If the county agrees to proceed, the parties may select a mutually agreed upon third appraiser, whose appraisal shall be final and binding upon the parties, and whose fee shall be paid for equally by both parties. [Ord. 1157, 1998; Ord. 1072 § 3, 1982]

Chapter 12.20

UTILITY INSTALLATIONS WITHIN ROAD RIGHTS-OF-WAY

Sections:

- 12.20.010 Accommodation of utilities on rights-of-way.
- 12.20.020 Definitions.
- 12.20.030 Applications.
- 12.20.040 Utility permit types.
- 12.20.050 Revocation of permit and suspension of issuance.
- 12.20.060 Franchise.
- 12.20.070 Utility permit administration compensation.
- 12.20.080 Financial security.
- 12.20.090 Location.
- 12.20.100 Design.
- 12.20.110 Standards and codes.
- 12.20.120 Condition of facilities.
- 12.20.130 Interference with rights-of-way.
- 12.20.140 Relocation or removal of utility facilities.
- 12.20.150 Coordination of construction activities.
- 12.20.160 Engineer's certification.
- 12.20.170 Construction schedule and notice of work.
- 12.20.180 Compliance with utility permit.
- 12.20.190 Display of utility permit.
- 12.20.200 Noncomplying work.
- 12.20.210 Completion of construction.
- 12.20.220 As-built drawings.
- 12.20.230 Underground facilities.
- 12.20.240 Overhead facilities.
- 12.20.250 Fiber optic systems.
- 12.20.260 Vegetation management.
- 12.20.270 Aesthetic and scenic considerations.
- 12.20.280 Installations on roadway bridges and structures.
- 12.20.290 Damage to property.
- 12.20.300 Damage to permittee's facilities.

- 12.20.310 Repair and emergency work.
- 12.20.320 Restoration of rights-of-way.
- 12.20.330 Restoration of improvements.
- 12.20.340 Traffic control.
- 12.20.350 Eminent domain.
- 12.20.360 Indemnification.
- 12.20.370 Violations--Penalties.

12.20.010 Accommodation of utilities on rights-of-way.

(1) The board finds that it is in the public interest of Lewis County to adopt regulations (hereinafter policy) to preserve and protect county rights-of-way, provide for the health and safety of the traveling public utilizing rights-of-way, and provide for an orderly process of installing utility facilities.

(a) This policy shall apply to all franchises and permits issued pursuant to RCW 80.32.010, RCW 80.36.040, Ch. 36.55 RCW, the Telecommunications Ordinance, Chs. 12.25 through 12.50 LCC, and the Cable Communications Ordinance, Ch. 5.10 LCC, to all public and private utility facilities, and to all installation, replacement, adjustment, maintenance, repair and relocation of utility facilities within the county rights-of-way, including but not limited to: electric power, telecommunications, telephone, cable television or video programming, telegraph, water, gas, all petroleum products, steam, chemicals, sewage, drainage, irrigation, and similar pipes, lines or cables.

(b) All contractors, companies and installers of fiber optic cable shall obtain a permit from the county and receive approval prior to the installation of any fiber optic cable within county rights-of-way. These regulations cannot address all situations and conditions that may be encountered. Specific provisions contained in this chapter may not be appropriate for all locations and existing conditions. The policy is intended to assist, but not substitute for, competent

work by both road and utility design and installation professionals. This policy is not intended to limit any innovative or creative effort which could result in better quality, better cost savings or improved safety characteristics.

(2) These regulations may be subject to other local regulations or policies due to the overlap of utility regulations and policies. In the event of any conflict between these regulations or policies of the county, the regulations or policies which provide greater regulatory controls shall apply. No permit granted pursuant to this chapter shall remove the applicant's obligation to comply in all respects with provision of any federal, state, or local law or regulation.

(3) It shall be the responsibility of any utility provider installing or relocating any of its utility facilities to ascertain and abide by the requirements and conditions of these laws or regulations.

(4) A copy of any amendments to this policy shall be forwarded to the county road administration board within thirty days of such adoption in pursuant to WAC 136-40-050. [Ord. 1172, 2000]

12.20.020 Definitions.

Unless otherwise stated, words and phrases used in this chapter shall have the following meanings:

(1) "Appurtenance" means equipment and/or accessories which are a part of an operating utility system or subsystem.

(2) "Backfill" means replacement of excavated material with suitable material compacted as specified.

(3) "Bedding" means placement of suitable material to provide structural support and protect a pipe, conduit, casing or gallery.

(4) "Board" means the board of Lewis County commissioners.

(5) "Boring" means grade and alignment-controlled mechanical or other

method of installing, such as hole hogging, a pipe or casing under a road without disturbing the surrounding medium.

(6) "Carrier" means pipe directly enclosing a transmitted fluid or gas.

(7) "Casing" means a larger pipe enclosing a carrier for the purpose of providing structural or other protection to the carrier and/or to allow for carrier replacement without re-excavation, jacking or boring.

(8) "Coating" means protective material applied to the exterior or interior of a pipe or conduit to prevent or reduce abrasion and/or corrosion damage.

(9) "Conduit" means an enclosed tubular runway for protecting wires or cables.

(10) "County" means Lewis County.

(11) "Cover" means depth to top of pipe, conduit, casing or gallery below the grade of a road, shoulder or ditch.

(12) "Director" means the Lewis County director of public works or designee.

(13) "Drain" means appurtenances to discharge accumulated liquids from casings or other enclosures.

(14) "Emergency" means any condition constituting a clear and present danger to life or property, or a customer service outage.

(15) "Encasement" means a structural element surrounding a pipe or conduit for the purpose of preventing future physical damage to the pipe or conduit.

(16) "Engineer" means the Lewis County Engineer or designee.

(17) "Excavation" means any operation in which earth, rock, or other material on or below the ground is moved or otherwise displaced by any means, except the tilling of soil less than twelve inches in depth for agricultural purposes, or road and ditch maintenance that does not change the original road grade or ditch flowline.

(18) "Fiber optics" means any form of communications transmission by glass wire

strands that uses light to send data, video and sound.

(19) “Franchise” means occupancy and use document granted by the county for occupancy of rights-of-way in accordance with Chapter 36.55 RCW and/or Chapter 80.32 RCW.

(20) “Gallery” means an underpass for two or more utility lines.

(21) “Jacking”. See “Boring.”

(22) “Manhole” means an opening in an underground utility system into which workers or others may enter for the purpose of cleaning, testing, making installations, inspections, repairs and connections.

(23) “MUTCD” refers to the current edition of the Manual on Uniform Traffic Control Devices, as adopted by the State Department of Transportation and published by the United States Department of Transportation, Federal Highway Administration.

(24) “Overhead facilities” means utility facilities and telecommunications facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

(25) “Pavement” means the combination of subbase, base course and surfacing placed on a subgrade to support the traffic load and distribute it to the subgrade.

(26) “Permit” means a document issued under the authority of the county engineer or director. The permit provides specific requirements and conditions for specific utility work at specific locations within the rights-of-way.

(27) “Permittee” means a utility owner or designated representative who has a utility facility within county rights-of-way or who has been granted certain rights and obligations as more fully described in this chapter.

(28) “Pipe” means a structural tubular product designed, tested and produced for the transmittance of specific liquids and gases under specific conditions.

(29) “Plowing” means direct burial of utility lines by means of a “plow” type mechanism, including but not limited to wheel trenching, which breaks the ground, places the utility line at a predetermined depth, and closes the break in the ground.

(30) “Pressure” means internal gauge pressure in a pipe in pounds per square inch, gauge (psig).

(31) “Private lines” means privately owned, operated and maintained utility facilities devoted exclusively to the use of the owner.

(32) “Relocation” means the changing of location of an existing utility facility or appurtenance to another location without changing the character or general physical nature of the utility facility or appurtenance.

(33) “Replacement” means installation of a like element of a utility system or subsystem in the same or near-same physical location to function in place of an existing element normally due to damage, wear or obsolescence of the element.

(34) “Restoration” means all work necessary to replace, repair or otherwise reestablish the rights-of-way and all features contained within it to the same or equal condition as it existed prior to any change or construction therein.

(35) “Rights-of-way” includes the surface of and space above and below any real property in the county in which the county has any interest whether in fee or otherwise, or interest as a trustee for the public, as they now or hereafter exist, including, but not limited to, all public streets, highways, avenues, roads, reservoirs, alleys, sidewalks, tunnels, viaducts, bridges, skyways, or any other public place, area or property under the control of the county.

(36) “Road” or “roadway” means a general term denoting a street, road or other public way, including shoulders, designated for the purpose of vehicular traffic.

(37) “Road standards” means the most current version of the Lewis County road

standards, on file with the Dept. of Public Works, 350 N. Market Blvd., Chehalis, WA.

(38) "Service connection" means a single connection made to a utility facility for the purpose of providing utility or telecommunication services.

(39) "Service repair" means a repair made to a service connection.

(40) "Significant Tree" means a healthy tree (i.e., a tree that does not have a high probability of falling due to a debilitating disease or a structural defect) twenty-four inches in diameter at breast height (four and one-half feet above grade) located within the county rights-of-way or overhanging the rights-of-way.

(41) "Sleeve" means a short casing through a pier, wall or abutment of a highway structure.

(42) "Standard specifications" means the Washington State Department of Transportation "Standard Specifications for Road, Bridge, and Municipal Construction," current edition.

(43) "Telecommunications facilities" means the plant, equipment and property within the county used to transmit, receive, distribute, provide or offer telecommunications service.

(44) "Telecommunications service" means the providing or offering for rent, sale or lease, or in exchange for other value received, the transmittal of voice, data, image, graphic or video programming information or service(s) between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium.

(45) "Traffic control" means those activities necessary to safeguard the general public, as well as all workers, during the construction and maintenance of utility facilities within the rights-of-way.

(46) "Trenched" means installation of a utility in an open excavation.

(47) "Underground facilities" means utility or telecommunications facilities located under the surface of the ground and associated above ground appurtenances including but not limited to communication pedestals, and pad mounted electrical transformers, alone or in combination, direct buried or in utility tunnels or conduits, excluding the underground foundations or supports for overhead facilities.

(48) "Untrenched" means installation of a utility without breaking the ground or pavement surface such as by jacking or boring.

(49) "Utility facility" means privately, publicly or cooperatively owned plant, equipment and property including, but not limited to, the poles, pipes, mains, conduits, ducts, cables, wires, plant and equipment located under, on or above the surface of the ground within rights-of-way and used or to be used for the purpose of providing utility or telecommunications services.

(50) "Vent" means an appurtenance to discharge gaseous substances from casings or other enclosures. [Ord. 1172, 2000]

12.20.030 Applications.

Applications for annual and individual utility permits to construct, maintain, repair, relocate or remove utility facilities within the rights-of-way shall be submitted upon forms provided by the county. In addition to demonstrating compliance with Chs. 12.25 through 12.50 LCC, applications may need to be supplemented with a State Environmental Policy Act (SEPA) checklist, a Critical Areas/Resource Lands (CARL) review form, and a shoreline permit, as applicable, under the provisions of Title 17 LCC, or franchise or license, as applicable. The applicant shall pay all associated fees and shall include any additional information as requested by the engineer. The application shall be accompanied by a description of the utility facilities to be constructed, drawings, plans

and specifications in sufficient detail to demonstrate:

(1) That the utility facilities will be constructed in the rights-of-way in accordance with all applicable codes, rules, regulations, and such special conditions as the county may deem appropriate;

(2) The location and route of all utility facilities to be installed on existing utility poles in the rights-of-way;

(3) The location and route of all utility facilities in the rights-of-way to be located under the surface of the ground, including line and grade proposed for the burial;

(4) To the extent such information is made accessible to the applicant, the location of all existing underground utilities, conduits, ducts, pipes, mains and installations which are within the rights-of-way along the route proposed by the applicant as located through the one-call system (Ch. 19.122 RCW);

(5) The construction methods to be employed for protection of existing structures, fixtures and facilities within or adjacent to the rights-of-way;

(6) The location and dimension of all Significant Trees that would be impacted by the project (e.g., tree removal, topping, locating above ground and underground facilities within the drip line) and a detailed description of the proposed impacts on such trees;

(7) The location of all monuments within or adjacent to the proposed route that will be removed or destroyed. (Note: Permits may be required by Chapter 332-120 WAC.) [Ord. 1172, 2000]

12.20.040 Utility permit types.

(1) All utility providers conducting work within county rights-of-way shall obtain a utility permit as follows, unless otherwise exempted hereunder.

(a) Type-A Activities: Type-A activities include installing less than five new utility poles or replacing any utility

poles, installing short side utility services more than two feet off the edge of pavement, individual short side service connections with less than two hundred feet of underground installation, and removing two or fewer panels of portland cement concrete sidewalk. Utility providers conducting Type-A activities within county rights-of-way shall obtain an annual utility permit. Upon obtaining an annual utility permit, all utility providers shall provide proper notification before starting any Type-A activities and must provide written certification within ten calendar days that the work was done in conformance with this chapter. The county may do random inspections of work conducted under an annual utility permit or franchise.

(b) Type-B Activities: Type-B activities have a greater impact on the rights-of-way than Type-A activities. Type-B activities include individual service connections with more than two hundred feet of underground installation, all roadway crossings, installing underground vaults, constructing splice pits, attaching to any bridge structure, installing main lines, and all other utility activities within county rights-of-way. Utility providers conducting Type-B activities within county rights-of-way shall obtain an individual utility permit for each Type-B activity.

(2) Exempted Activities: Utility providers conducting the following exempted activities within county rights-of-way shall not be required to obtain a utility permit; however, utility providers shall comply with all other provisions of this chapter: stringing cables on utility poles and associated maintenance thereof, accessing and maintenance of existing manholes, handholes, pedestals, closures and vaults, and replacing above-ground meters, transformers, closures, and pedestals, and performing emergency work. [Ord. 1172, 2000]

12.20.050 Revocation of permit and suspension of issuance.

(1) Upon written notice by the engineer, the engineer may revoke a utility provider's annual utility permit at any time for gross noncompliance with county standards creating health, safety or roadway stability hazards. If approved by the director, the annual utility permit will be automatically revoked after three written notifications of noncompliance with this chapter by the engineer within a twelve-month period. The revocation shall remain in effect until such time as the utility provider addresses the issues of noncompliance and corrective measures to the engineer. The engineer may reissue the annual utility permit if corrective steps have been taken to insure future compliance. If a utility provider's annual utility permit is revoked and prior to reinstatement, the utility provider shall obtain an individual utility permit for each Type-A activity conducted within county rights-of-way.

(2) Upon written notice by the engineer, the engineer may suspend issuance of permits to any utility provider at any time for failure of that utility provider to tender permit compensation within 120 days of billing or to provide security, pursuant to Sections 12.20.070 & -.080 LCC, respectively. Such suspension shall continue until the account is brought current or until proper security is tendered by the utility provider. [Ord. 1172, 2000]

12.20.060 Franchise.

(1) To the extent permitted by law, a franchise shall be required of any utility provider who currently occupies or desires in the future to occupy rights-of-way and to provide utility services to any person or area in the county.

(a) Franchises will not be required for the construction and maintenance of utility facilities serving one single-family residence where such facilities will cross the

rights-of-way perpendicular to the rights-of-way line, plus or minus ten degrees. Persons who fall under this franchise exemption shall enter into an indemnification agreement before a utility permit will be issued.

(b) Franchises will not be required for any work on county rights-of-way that is performed by or on behalf of the county or by any entity under contract with the county to perform such work.

(2) No franchise granted hereunder shall confer any exclusive right, privilege or franchise to occupy or use the rights-of-way for delivery of utility services or any other purposes.

(3) Except as otherwise provided in this chapter, this section shall have no effect on any existing franchise or agreement until:

(a) The expiration of such franchise or agreement; or

(b) An amendment to an unexpired franchise/agreement, unless both parties agree to defer full compliance to a specific date not later than the present expiration date; or

(c) Any transaction which results in transfer of ownership or working control of the franchisee.

(4) Notwithstanding the foregoing, the requirements of this section shall apply to any utility provider who currently occupies rights-of-way without a license, franchise or other agreement with the county. Any such utility provider shall apply for a franchise as provided by this section within one hundred twenty days of the effective date of this chapter.

(5) If a utility provider is required to obtain a license, franchise or cable franchise under the county cable or telecommunications ordinances, then this section shall not apply.

12.20.070 Utility permit administration compensation.

The applicant shall be required to compensate the county for the county's actual attributable costs and expenses to permit issuance, and for on-going administration and monitoring of the permit. The compensation shall be paid to the county no later than the tenth day of the month following issuance of a billing statement by the county for the preceding month(s) activity. [Ord. 1172, 2000]

12.20.080 Financial security.

(1) Before any construction work is started, financial security in the form of a bond, irrevocable letter of credit or irrevocable assignment of interest in a bank account in an amount determined by the engineer may be required to insure completion of construction, including but not limited to the restoration of surfacing, slopes, slope treatment, top soil, landscape treatment, drainage facilities and cleanup of the rights-of-way for a period ending not more than one year after date of completion. If a surety bond is used as financial security, it shall be written by a surety company authorized to do business in the state of Washington.

(2) A blanket financial security may be maintained covering multiple permits in lieu of individual financial security at the engineer's discretion.

(3) Financial security will not be required of the United States government or any of its agencies or of any municipal corporation or department of the state of Washington and its local subdivisions.

(4) The financial security shall guarantee, to the satisfaction of the county:

(a) Timely completion of construction;

(b) Construction in compliance with applicable plans, permits, technical codes and standards;

(c) Proper location of the utility facilities as specified by the county; and

(d) Restoration of the rights-of-way and other property affected by the construction. [Ord. 1172, 2000]

12.20.090 Location.

(1) Utility installations shall be located to minimize need for later adjustment to accommodate future roadway improvements and to permit access to servicing such installations with minimum interference to roadway traffic. The county shall make available to permittees a copy of its six-year transportation improvement program (or capital facilities and transportation plan where required), in order to minimize both utility customer and road user inconvenience should future road improvements (on existing or new alignment) require adjustment or relocating of the utility facilities. Utility installations shall also be located to minimize impacts to critical areas, as defined in Ch. 17.35 LCC.

(2) The utility company shall be responsible to consider a minimum clear zone distance in all new construction, reconstruction or relocation of all overhead facilities and their appurtenances and underground facilities. Clear zone shall be defined as the roadside area at the edge of the traveled lane that is available for safe use by errant vehicles. The available clear zone is the distance, measured in feet, normal to the roadway beginning at the edge of the traveled lane to the closest part of any fixed object or nontraversable obstacles as defined in the WSDOT Design Manual (M 22-01) and the 1990 AASHTO "A Policy on Geometric Design of Highways and Streets" (Green Book).

(3) Survey control monuments including existing monuments disturbed, destroyed or removed during construction, shall be placed or replaced by a registered surveyor, at the expense of the permittee, in accordance with recognized good practice of

land surveying, and in conformance with all applicable state law and state and local regulations. [Ord. 1172, 2000]

12.20.100 Design.

(1) The permittee shall be responsible for the design of the utility facility being proposed. This responsibility shall include, in addition to the integrity of the proposed utility facility, provisions for public safety during the course of construction and consideration of traffic safety and accident potential for the life of the installation.

(2) For work requiring application to the county, the county may review and approve the permittee's plans with respect to:

- (a) Location;
- (b) The manner in which the utility facility is to be installed;
- (c) Measures to be taken to preserve safe and free flow of traffic, including a traffic control plan;
- (d) Structural integrity of the roadway, bridge or other structure;
- (e) Ease of future road maintenance; and
- (f) Appearance of the roadway.

(3) Permittee shall notify the engineer of known or planned expansion of the utility facilities within the rights-of-way, particularly those located underground or attached to bridges or other structures within the rights-of-way.

(4) The county's granting of a franchise or permit shall not imply or be construed to mean the county shall be responsible for the design, construction or operation of the facility or for public safety during the facility's installation, operation or maintenance. [Ord. 1172, 2000]

12.20.110 Standards and codes.

All utility installations shall be designed in accordance with the standards, codes and regulations applicable to the type of utility. This shall also include any road standards

which the county shall deem necessary to provide adequate protection to the road, its safe operation, appearance and maintenance. Permittee shall further comply with any applicable provision of Title 17 LCC, Land Use and Zoning, and the "Lewis County Regulations and Requirements for [power, sewer, telephone, television and water lines]", adopted and published by the County Engineer. [Ord. 1172, 2000]

12.20.120 Condition of facilities.

All utility facilities shall be kept in a state of good repair. If any utility facility is not in such condition, the permittee shall undertake such work necessary to return the utility facility to a state of good repair. [Ord. 1172, 2000]

12.20.130 Interference with rights-of-way.

No utility facility may be located or maintained so as to unreasonably interfere with the use of the rights-of-way by the county, by the general public or other persons authorized to use or be present in or upon the rights-of-way. [Ord. 1172, 2000]

12.20.140 Relocation or removal of utility facilities.

(1) Within ninety days following written notice from the county, a permittee shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any utility facilities within the rights-of-way whenever the engineer shall have determined that such removal, relocation, change or alteration is reasonably necessary for:

(a) The construction, repair, maintenance or installation of any county, state, federal and/or city funded project;

(b) The operations of the county or other governmental entity in or upon the rights-of-way.

(2) The engineer may extend the ninety-day time period for good cause. All work

must be accomplished by the same permitting process as for new installations.

(3) The county may also remove or relocate any utility facilities located within the rights-of-way that the county determines to be necessary, appropriate or useful in response to any public health or safety emergency. All such removal or relocation shall be at the sole expense of the permittee.

(4) Notwithstanding reinforcement or protection otherwise provided, a permittee shall be responsible for the security of each existing pipeline and utility facility within a road construction zone. Where there are unusual utility hazards or where heavy construction equipment will be used, the permittee shall provide adequate temporary protection. In replacing the roadway, the design should give due consideration to the protection of previously existing utility facilities in the roadway section without sacrificing the geometrics of roadway design.

(5) If a permittee is required to relocate or remove its utility facilities from the rights-of-way and fails to do so within the designated time set out by the engineer, the county may cause such to occur and charge the permittee for the costs incurred. [Ord. 1172, 2000]

12.20.150 Coordination of construction activities.

All permittees are required to cooperate with the county and with each other as follows:

(1) By January 1st of each year, each permittee shall provide the engineer with a schedule of its known proposed construction activities which may affect the rights-of-way for that year.

(2) Each permittee shall meet with the county, other utility owners and users of the rights-of-way annually or as determined by the county to schedule and coordinate construction.

(3) All construction locations, activities and schedules shall be coordinated, as ordered by the engineer, to minimize public inconvenience, disruption or damages.

(4) To insure coordination of construction activities, the engineer may require the permittee to field verify the location of their utility facilities within the county rights-of-way for both depth and alignment within two weeks of notice by the engineer. [Ord. 1172, 2000]

12.20.160 Engineer's certification.

Unless otherwise provided in a license, franchise, or cable franchise, the engineer may require utility permit applications, plans, reports, basin maps and calculations to be accompanied by a written certification, sealed and dated, by a registered professional engineer in the state of Washington that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules and regulations. If required, the written certification shall read:

The design improvements shown in this set of plans, reports, basin map, and calculations conform to the most current edition of the Lewis County Road Standards, Stormwater Management Ordinance, Utility Installations Within Road Rights-of-Way Ordinance, Telecommunications Ordinance, Cable Communications Ordinance, and the Lewis County Regulations and Requirements for power, sewer, telephone, television and water lines. All design variances have been approved by the Lewis County Engineer. I approve these plans for construction.

[Ord. 1172, 2000]

12.20.170 Construction schedule and notice of work.

Unless otherwise provided in a license, franchise or cable franchise, no permittee, or any person acting on the permittee's behalf,

shall commence any relocation or removal work or any other nonemergency work involving undergrounding, excavation or obstructing in or about the rights-of-way, except service repairs and individual service connections, without seven working days advance notice to the engineer. The permittee shall also provide abutting private property owners or occupants seven working days advance notice of the specific location of work, the time work is scheduled to commence, and contact name and telephone number of permittee. [Ord. 1172, 2000]

12.20.180 Compliance with utility permit.

All construction practices and activities shall be in accordance with the utility permit and approved final plans and specifications for the utility facilities. The engineer shall be provided access to the work and such further information as he or she may require to ensure compliance with such requirements. [Ord. 1172, 2000]

12.20.190 Display of utility permit.

The permittee shall maintain a copy of the utility permit and approved plans at the construction site, which shall be displayed and made available for inspection by the engineer at all times when construction work is occurring. [Ord. 1172, 2000]

12.20.200 Noncomplying work.

Upon order of the engineer, all work which does not comply with the utility permit, the approved plans or specifications for the work or the requirements of this chapter shall be removed or relocated at the expense of the permittee. [Ord. 1172, 2000]

12.20.210 Completion of construction.

The permittee shall promptly complete all construction activities so as to minimize disruption of the rights-of-way and other public and private property. All construction work authorized by a utility permit within rights-of-way, including restoration, must be

completed within ninety days of the date of issuance or at such other interval as the county may specify in writing upon issuance of the permit. The engineer may extend the ninety-day time period for good cause. [Ord. 1172, 2000]

12.20.220 As-built drawings.

If an engineer's certification is required under Section 12.20.160, then in addition to the requirements of Section 12.20.320, within thirty days after completion of construction, the permittee shall furnish the engineer with two complete sets of plans, drawn to scale and certified to the county as accurately depicting the location of all utility facilities constructed pursuant to the utility permit, except individual service connections and service repairs. [Ord. 1172, 2000]

12.20.230 Underground facilities.

(1) Location and Alignment.

(a) For all crossings, the angle of crossing should be as near a right angle to the road centerline as practicable. However, lesser angles may be permitted based upon economic considerations of practical alternatives.

(b) Where practicable, crossings should avoid cuts, footings of bridges and retaining walls, or locations where roadway drainage would be affected.

(c) Longitudinal installations should run parallel to the roadway and lie as near as practicable to the rights-of-way line. Installations which cannot be so installed will be allowed within the rights-of-way, provided that the installation will not adversely affect the design, construction, stability, structural integrity, traffic safety or operation of the road facility.

(d) Where irregularly shaped portions of the rights-of-way extend beyond the normal rights-of-way limits, a uniform alignment of utility facilities shall be allowed.

(e) Where existing utility facilities are in place, new utility facilities shall be compatible with the existing installations and conform to this chapter as nearly as practicable.

(f) Except upon an adequate showing of another route is economically prohibitive, any water or sewer line other than a main line shall not be allowed parallel to a county road within the county rights-of-way.

(2) Cover. The grade of and resulting cover for an underground utility shall be a minimum of thirty vertical inches below the finished surface or the bottom of the ditch for all installations within county rights-of-way, or in compliance with applicable federal, state and industry requirements if greater; provided, however, where less than the minimum cover is made necessary to avoid obstacles, the utility facilities shall either be rerouted or protected with a casing, concrete slab or other method acceptable to the county.

(3) Encasement.

(a) Casings shall be installed for roadway crossings where required by appropriate industry code.

(b) Casings may be required for the following conditions:

(i) As an expediency in the insertion, removal, replacement or maintenance of a carrier line crossing or other locations where it is necessary in order to avoid open trench construction;

(ii) As protection for carrier lines from external loads or shock either during or after construction of a road;

(iii) For jacked or bored installations of coated carrier lines unless assurance is provided to the county that there will be no damage to the protective coating.

(c) Within the rights-of-way, where practicable, casing pipes shall extend beyond the toe of fill slopes, back of roadway ditch, or outside of curb.

(d) Other than for necessary carriers, vents and/or drains, casing pipes shall be sealed at both ends.

(e) Casing pipes shall be designed to support the load of the road and superimposed loads thereon and, as a minimum, shall equal the structural requirements for road drainage facilities. Casings shall be composed of materials of sufficient durability to withstand conditions to which they may normally be exposed.

(f) Uncased Carriers:

(i) The carrier pipe shall conform to the material and design requirements of the appropriate utility industry and governmental codes and specifications.

(ii) The carrier pipe shall be designed to support the load of the road, plus superimposed loads thereon, when the pipe is operated under all ranges of pressure from maximum internal to zero pressure.

(4) Appurtenances.

(a) Vents shall be required for casings, tunnels and galleries enclosing carriers of fuel where required by federal safety standards. Vent standpipes should be located and constructed so as neither to interfere with maintenance of the road nor to be concealed by vegetation. Preferably standpipes should stand by a fence or on the rights-of-way line.

(b) Drains shall be required for casings, tunnels or galleries enclosing carriers of liquid, liquefied gas or heavy gas. Drains for carriers of hazardous materials shall be directed to natural or artificial holding areas to prevent the potential for surface or groundwater contamination. Drains for which only water or other nonhazardous liquids may discharge may be directed into the roadway ditch or natural water course at locations approved by the county. The drain outfall shall not be used as a wasteway for routine purging of the carrier unless specifically authorized by the county.

(c) Location markers and emergency information should be used when required by applicable state and federal standards.

(d) Manholes should be designed and located in a manner that will cause the least interference to other utilities or future road expansion. Where practicable, installations in the pavement or shoulders should be avoided.

(5) Installation. Installations shall ensure safety of traffic and preservation of the roadway structure, and required construction shall, unless otherwise provided in the approved permit, be in accordance with the following controls:

(a) Untrenched construction shall be required for pipelines crossing roads paved with asphalt concrete or cement concrete and for roads paved with bituminous surface treatment unless otherwise directed by the engineer.

(i) If sufficient rights-of-way exist, the length of untrenched construction shall extend a minimum of four feet from edge of pavement, except that a lesser standard may be permitted by the county engineer when conditions warrant.

(ii) Over breaks, unused holes or abandoned casings shall be backfilled as directed by the engineer.

(iii) Water boring under roadways shall not be permitted.

(iv) Existing carriers and conduit installed under a roadway shall be physically located prior to pipeline installation.

(b) Trenched Construction and Backfill.

(i) Where the pavement must be removed, it shall first be cut in vertical (or undercut) continuous straight lines.

(ii) Trenches shall be cut to have vertical faces, where soil and depth conditions permit, with a maximum width of outside diameter of pipe plus two feet. Shoring shall comply with the Washington

State Department of Labor and Industries Safety Code.

(iii) The pipe or carrier shall be installed and the trench backfilled in a manner assuring no deformation of the pipe likely to cause leakage and restoration of the structural integrity of the roadway structure. Specific trench backfill requirements regarding materials and methods shall be provided by the county.

(iv) When trenching is approved on paved roads, the pavement shall be restored as required by the county.

(c) Plowing of communication and electrical lines on or adjacent to existing roads by means of a vibratory plow may be allowed by the county; provided, that the structural integrity of the roadway is not impaired.

(6) One Call System. Utility installations shall be located and identified in accordance with Title 19 RCW (Washington State One Call System), as enacted or in the future is amended from time to time. [Ord. 1172, 2000]

12.20.240 Overhead facilities.

Power and Communication Lines.

(1) Single-pole construction and joint use of the pole is desirable and should be used whenever feasible.

(2) The minimum vertical clearance for overhead power and communication lines above the ground and the minimum lateral and vertical clearance from bridges shall be in compliance with the National Electrical Safety Code and Washington State Department of Labor and Industries Electrical Construction Code.

(3) Where irregularly shaped portions of the rights-of-way extend beyond the normal rights-of-way limits, a uniform alignment of utility facilities may be allowed. [Ord. 1172, 2000]

12.20.250 Fiber optic systems.

(1) Depth. All fiber optic systems shall be installed at a depth of not less than thirty-six inches below the road surface or thirty-six inches below any county ditch line if installed within a drainage area.

(2) Location Marking. All fiber optic cable installers shall mark the installation of the system with marking tape or locating wire. When marking tape is placed, it shall be used at twelve- to eighteen-inch depth. Where nonmetallic fiber cable is used, a locator wire shall be used and must be at same depth as fiber optic cable. [Ord. 1172, 2000]

12.20.260 Vegetation management.

(1) Utilities engaged in vegetation management on county rights-of-way shall initially submit an Integrated Vegetation Management (IVM) Plan to the county for approval. This plan shall emphasize physical, mechanical, cultural and biological control methods to promote stable plant communities. The IVM plan shall include:

(a) Goals and objectives of the vegetation management program;

(b) Operational guidelines and standards for vegetation management activities. These guidelines as a minimum shall include the decision making criteria, the application method, and the rates of application used when applying a herbicide;

(c) A list of herbicides the utility intends to use;

(d) Specific areas in the county where the proposed herbicides will be used.

(2) The county may limit or restrict the types, amounts, application methods, location and timing of pesticide applications if it has been determined that the proposed application will have a detrimental effect on ground and/or surface water, other sensitive areas, and/or the public health. However, the limitations or restrictions will not be in

conflict with state law governing utility rights-of-way maintenance.

(3) The utilities IVM plan shall be consistent with the Critical Areas, Shorelines and Stormwater Management Ordinances and any future groundwater or wellhead protection ordinances. After the county approves the initial IVM plan, revisions shall be submitted and approved annually.

(4) Utilities engaged in tree trimming along county rights-of-way shall submit the conditions under which they will be trimming (excluding topping) any significant tree, including the magnitude and nature of the trimming, by tree species. This information shall be submitted along with the IVM plan and will be reviewed and approved by the county concurrently.

12.20.270 Aesthetic and scenic considerations.

(1) Significant trees shall not be impacted (e.g., tree removal, topping, locating above ground and underground facilities within the drip line) without prior approval by the engineer, except during emergency situations as described in Section 12.20.310.

(2) It is preferable to retain all other healthy trees that do not pose a danger or hazard to the extent possible. For those trees proposed to remain, sound pruning practices shall be used that take into consideration safety first, arboriculturally correct methods and natural appearance.

(3) All other landscaping and grounds removed, damaged or disturbed as a result of the construction, installation, maintenance, operation, repair, relocation or replacement of utility facilities shall be replaced or restored to as near the original condition as reasonably possible. [Ord. 1172, 2000]

12.20.280 Installations on roadway bridges and structures.

Attachment of utility facilities to a roadway structure (including bridges) may be allowed as approved by the engineer where such attachment conforms to sound engineering considerations for preserving the roadway structure and its safe operation, maintenance and appearance. The attachment shall be in accordance with the following:

(1) Attachment of a utility facility shall not be considered unless the structure in question is of a design that is adequate to support the additional load and can accommodate the utility facility without compromise of roadway features, including reasonable ease of maintenance.

(2) Manholes and other utility access panels should be avoided within the roadway portion of the structure.

(3) Attachment on a structure of a pipeline carrying a hazardous transmittant, not including natural gas, shall be avoided.

(4) The utility facility attachment shall not reduce the clearance of a structure where such clearance is critical. Attachment to the outside of a structure should be avoided where there are reasonable alternatives.

(5) Utility facility mountings shall be of a type which shall not create noise resulting from vibration.

(6) The hole created in a structure abutment shall be sleeved, shall be of the minimum size necessary to accommodate the utility facility, and shall be sealed to prevent any leakage of water or backfill material.

(7) The utility facility back of the abutment shall curve or angle out to align outside the roadbed area in as short a distance as is operationally practicable.

(8) Communication and electrical power line attachments shall be suitably insulated, grounded and preferably carried in protective conduit or pipe from point of exit from the ground to reentry. Carrier pipe and

casing pipe shall be properly isolated from electric power line attachments. [Ord. 1172, 2000]

12.20.290 Damage to property.

No permittee or any person acting on a permittee's behalf shall take any action or permit any action to be done which may impair or damage any rights-of-way, or other property located in, on or adjacent thereto except in accordance with Section 12.20.320, Restoration of rights-of-way. [Ord. 1172, 2000]

12.20.300 Damage to permittee's facilities.

To the extent permitted by Washington law, the county shall not be liable for any damage to or loss of any utility facility within the rights-of-way as a result of or in connection with any emergency removal or relocation, public works, public improvements, construction, excavation, grading, filling or work of any kind in the rights-of-way by or on behalf of the county or any entity under contract with the county except for damage caused by the negligence of the county. [Ord. 1172, 2000]

12.20.310 Repair and emergency work.

In the event of an unexpected repair or emergency (including but not limited to storm conditions or other conditions where public safety is of paramount consideration), a permittee may commence such repair and emergency response work as required under the circumstances; provided, the permittee shall notify the engineer as promptly as possible, before such repair or emergency work or as soon thereafter as possible if advance notice is not practicable. [Ord. 1172, 2000]

12.20.320 Restoration of rights-of-way.

Restoration shall comply with the following:

(1) When a permittee, or any person acting on its behalf, does any work in or

affecting any rights-of-way, it shall, at its own expense, promptly remove any obstructions therefrom and restore such ways or property to the condition required by applicable county road standards. As used in this section, "promptly" means as required by the engineer in the reasonable exercise of the engineer's discretion.

(2) If weather or other conditions do not permit the complete restoration required hereunder, the permittee shall temporarily restore the affected ways or property. Such temporary restoration shall be at the permittee's sole expense, and the permittee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

(3) A permittee or other person acting on its behalf shall use suitable barricades, flags, flagmen, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such rights-of-way.

(4) All restoration work conducted under this section shall be subject to final inspection and approval by the engineer. [Ord. 1172, 2000]

12.20.330 Restoration of improvements.

(1) Upon completion of any construction work, the permittee shall promptly repair, but in no event longer than such time as may be established by the county during permit review, any and all public and private property, improvements, landscaping, fixtures, structures and facilities which are damaged during the course of construction, restoring the same to as near the original condition before construction commenced.

(2) All roadway crossings shall be done by means of boring or pushing (untrenched installation). Opening of the roadway surface shall not be permitted unless it has

been determined by the engineer that boring or pushing cannot be done.

(3) When a trenched crossing is approved, restoration shall be in accordance with one of the following guidelines:

(a) Controlled density fill (CDF) shall be required as a backfill material; or

(b) Select backfill, meeting the requirements of the standard specifications may be used. Backfill shall be compacted to at least ninety-five percent density and placed in a maximum of six-inch lifts. If the capability can be demonstrated, based upon compaction equipment or quality of backfill to achieve ninety-five percent density in thicker lifts, then the depth of backfill lifts may be increased as demonstrated to a maximum of one-foot.

(c) Native material may be used as backfill material when standard acceptable tests allow, and when standard tests demonstrate the material meets the requirements set forth in the standard specifications. The requirements for compaction and placement in subsection B above also apply when native material is used.

(4) After backfill and compaction of accepted method a, b, or c above, an immediate cold patch shall be placed and maintained in a manner acceptable to the engineer. A permanent hot mix patch of 0.17 feet minimum thickness or the existing asphalt thickness, whichever is the greater, shall be placed and sealed within thirty days, unless an extension is granted by the engineer.

(5) All utility facilities placed parallel to and within the pavement structure shall be required to overlay the full road with a minimum 0.10 feet of asphalt or asphalt concrete. Any exceptions to this overlay requirement will be on a case by case basis, subject to approval by the engineer, and considering the existing conditions of the pavement. Cement concrete pavement shall be restored consistent with the standard

specifications. Any cement concrete pavement affected by any construction work shall be repaired by replacement of the affected pavement panels.

(6) When conditions are warranted, the engineer may require all or a portion of the trench be backfilled with a combination of select backfill or CDF. Conditions that may warrant a combination use may be, but not limited to, the depth of trench required, the type of material that is being excavated and crossings on arterial and collector roadways.

(7) When conditions are warranted, the engineer may require financial security for a minimum of ten years in the form of a bond, irrevocable letter of credit or irrevocable assignment of interest in a bank account for all or a portion of restoration. Conditions that may warrant this may be, but not limited to, the placement of utility facilities in or near sensitive areas and areas of continuous settlement. [Ord. 1172, 2000]

12.20.340 Traffic control.

(1) Any construction proposed within the traveled way shall provide a Traffic Control Plan. All traffic control and traffic control devices shall be as specified in the latest edition of the MUTCD. The permittee shall implement the approved plan, when necessary, until the project is given final acceptance by the county. If conditions change, the Traffic Control Plan shall also reflect the changes.

(2) During any construction, barriers and warning signs shall be erected, lighted and maintained as necessary or as directed by the county for the protection of the traveling public. The county may hire or use county forces to bring traffic control up to the safety standards set out in the MUTCD, Washington State Department of Transportation (WSDOT) Design Manual and other applicable documents at the permittee's expense when the safety of the traveling public is at risk.

(3) Road closures.

(a) When road closures and detours cannot be avoided, the permittee shall notify the county at least seven days prior to the road closure. Road closures requiring action by the board shall require a minimum of twenty-one days advance notice. The county requires a detour plan to be prepared, submitted and approved prior to closing any portion of a county roadway.

(b) The road closure plan, at a minimum, shall include a detour route with the location and type of signs to be used, as per the MUTCD. A written statement describing the detour route, length of detour and proposed dates and times of road closure shall also be submitted.

(c) All road closures shall be consistent with Chapter 47.48 RCW. Special consideration needs to be given by the permittee concerning the timing requirements of road closures as specified in Chapter 47.48 RCW and the timing requirements for the board to review and approve the closure. [Ord. 1172, 2000]

12.20.350 Eminent domain.

Nothing in this chapter shall be deemed or construed to impair or affect, in anyway or to any extent, the county's power of eminent domain. [Ord. 1172, 2000]

12.20.360 Indemnification.

Each permittee shall defend, indemnify and hold harmless the county, its elected and appointed officials, agents and employees from any and all claims, actions, suits, proceedings, arbitrations, judgments, liability, loss, expense or damages of every kind and description, including but not limited to court costs and reasonable attorneys' fees, by reason of or in connection with the use by permittee of the county rights-of-way or action, error or omission of permittee, its employees, agents or subcontractors, whether by negligence or otherwise in connection with the use of such rights-of-way, except for those damages

caused solely by the negligence or wilful misconduct of the county, its elected and appointed officials, agents or employees acting within the scope of their employment; provided, that for only those provisions of this chapter which a court of competent jurisdiction determines are subject to RCW 4.24.115, then in the event of damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of the county, its elected and appointed officials, agents, or employees, and the permittee or permittee's agents or employees, permittee's liability to hold harmless and indemnify the county is enforceable only to the extent of permittee's negligence. [Ord. 1172, 2000]

12.20.370 Violations--Penalties.

(1) Any person, firm or corporation violating any of the provisions of this chapter shall be deemed guilty of a gross misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding five thousand dollars or by imprisonment for not more than one year, or by both such fine and imprisonment. Each person, firm or corporation found guilty of a violation shall be deemed guilty of a separate offense for every day during any portion of which any violation of any provision of this chapter is committed, continued or permitted by such person, firm or corporation and shall be punishable therefor as provided for in this chapter.

(2) Civil Penalty. The violation of any provision of this chapter shall be subject to civil penalties under LCC 1.20.040.

(3) Notwithstanding the existence or use of any other remedy, the director or engineer may seek legal or equitable relief to enjoin any acts or practices and abate any conditions which constitute or will constitute a violation of this chapter or other regulations adopted by this chapter. [Ord. 1180 §17, 2002; Ord. 1172, 2000]

Chapter 12.25

TELECOMMUNICATIONS

Sections:

- 12.25.010 Purpose.
- 12.25.020 Definitions.
- 12.25.030 Application to existing licenses, franchises or cable franchises.
- 12.25.040 Application to existing telecommunications carriers and cable operators.
- 12.25.050 Penalties.
- 12.25.060 Other remedies.
- 12.25.070 Administration.
- 12.25.080 [Reserved.]
- 12.25.090 Relationship to other ordinances, policies.
- 12.25.100 Acts at grantee's expense.

12.25.010 Purpose.

The purpose of this Chapter and the remainder of the Lewis County Telecommunications Ordinance is to:

(1) Establish a local policy concerning telecommunications carriers and cable operators;

(2) Establish predictable, enforceable, clear and nondiscriminatory local guidelines, standards and time frames for the exercise of local authority with respect to the regulation of telecommunications carriers and cable operators;

(3) Manage the rights-of-way in a manner that provides fair and equitable opportunities for competition in telecommunications;

(4) Minimize unnecessary local regulation of telecommunications providers and services;

(5) Enable the provision of advanced and competitive telecommunications services and cable services on the widest possible basis to the businesses, institutions and residents of the county;

(6) Permit and manage reasonable access to the public rights-of-way of the county for telecommunications purposes on a competitively neutral basis;

(7) Conserve the limited physical capacity of the public rights-of-way held in public trust by the county;

(8) Assure that the county's actual costs of granting, administering and monitoring private access to and use of the public rights-of-way and/or public property are fully paid by the persons seeking such access and causing such costs;

(9) Secure fair and reasonable compensation to the county and the residents of the county, in a nondiscriminatory manner, for permitting private use of the rights-of-way and/or public property;

(10) Assure that all telecommunications carriers and cable operators providing facilities or services within the county comply with the ordinances, rules and regulations of the county;

(11) Assure that the county can continue to fairly and responsibly protect the health, safety and welfare of the traveling public; and

(12) Enable the county to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development. [Ord. 1171, 2000]

12.25.020 Definitions.

Terms used in the ordinance codified in Chs. 12.25 through 12.50 LCC shall have the following meanings:

(1) "Affiliate" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person.

(2) "Board" means the Lewis County board of commissioners.

(3) "Cable Acts" means the federal Cable Communications Policy Act of 1984, as amended by the federal Cable Television

Consumer Protection and Competition Act of 1992, as amended by portions of the federal Communications Act of 1996, and as hereafter amended.

(4) "Cable facilities" means the plant, equipment, structures and property within the county used to transmit, receive, distribute, provide or offer cable service.

(5) "Cable operator" shall have the same meaning as defined in the Cable Acts.

(6) "Cable service" shall have the same meaning as defined in the Cable Acts.

(7) "County" means Lewis County.

(8) "Director" means the director of the Lewis County public works department or designee.

(9) "FCC" or "Federal Communications Commission" means the federal administrative agency, or lawful successor, authorized to regulate and oversee telecommunications carriers, services and cable operators on a national level.

(10) "Grantee" means telecommunications carriers and cable operators granted rights and bound by obligations as more fully described in Chs. 12.25 through 12.50 LCC.

(11) "Open video system" means those systems defined and regulated as open video systems by the Federal Communications Commission, pursuant to Section 653 of the federal Communications Act of 1934, as amended, 47 U.S.C. §573.

(12) "Ordinance" means the Lewis County telecommunications ordinance, Chs. 12.25 through 12.50 of the Lewis County Code.

(13) "Overhead facilities" means telecommunications facilities and cable facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

(14) "Person" means corporations, companies, associations, firms, partnerships, limited liability companies, other entities and individuals.

(15) “Rights-of-way” includes the surface of and space above and below any property in the county in which the county has any interest whether in fee, easements or otherwise, or interest as a trustee for the public, as they now or hereafter exist, including, but not limited to, all public streets, highways, avenues, roads, reservoirs, alleys, sidewalks, tunnels, viaducts, bridges, skyways, parks, trails, or any other public place, area or property under the control of the county.

(16) “Service connection” means a connection made to a telecommunications facility or cable facility for the purpose of providing telecommunications services or cable services.

(17) “Service repair” means a repair made to a service connection.

(18) “State” means the state of Washington.

(19) “Surplus space” means that portion of the usable space on a utility pole which has the necessary clearance from other pole users, as required by the orders and regulations of the Washington Utilities and Transportation Commission, to allow its use by a telecommunications carrier for a pole attachment.

(20) “Telecommunications carrier,” for purposes of the ordinance codified in Chs. 12.25 through 12.50 LCC, includes every person that directly or indirectly owns, controls, operates or manages plant, equipment, structures or property within the county, used or to be used for the purpose of offering telecommunications service; provided, however, this does not include lessees that solely lease capacity or bandwidth (and do not own telecommunications facilities within the unincorporated areas of the county).

(21) “Telecommunications facilities” means the plant, equipment, structures and property within the county used to transmit, receive, distribute, provide or offer telecommunications service.

(22) “Telecommunications service” means the providing or offering for rent, sale or lease, or in exchange for other value received, the transmittal of voice, data, image, graphic or video programming information or service(s) between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium; provided, however, for purposes of the ordinance codified in Chs. 12.25 through 12.50 LCC, cable service regulated under Ch. 5.10 LCC shall not be considered a telecommunications service.

(23) “Underground facilities” means telecommunications and cable facilities located under the surface of the ground, alone or in combination, direct buried or in utility tunnels or conduits, excluding the underground foundations or supports for overhead facilities.

(24) “Usable space” means the total distance between the top of a utility pole and the lowest possible attachment point that provides the minimum allowable vertical clearance as specified in the orders and regulations of the Washington Utilities and Transportation Commission.

(25) “Utility ordinance” means the Lewis County utilities installation within road rights-of-way ordinance codified in Chapter 12.20 LCC.

(26) “Washington Utilities and Transportation Commission” or “WUTC” means the state administrative agency, or lawful successor, authorized to regulate and oversee telecommunications carriers and telecommunications services in the state of Washington to the extent prescribed by law. [Ord. 1171, 2000]

12.25.030 Application to existing licenses, franchises or cable franchises.

Except as otherwise provided in the ordinance codified in Chs. 12.25 through

12.50 LCC, and to the extent provided by law, Chs. 12.25 through 12.50 LCC shall have no effect on any license, franchise or cable franchise existing as of the date of adoption of said ordinance until:

(1) The expiration of such license, franchise or cable franchise; or

(2) An amendment to an unexpired license, franchise or cable franchise, unless both parties agree to defer full compliance to a specific date not later than the present date. [Ord. 1171, 2000]

12.25.040 Application to existing telecommunications carriers and cable operators.

(1) Notwithstanding the foregoing, the requirements of Chs. 12.25 through 12.50 LCC shall apply to any telecommunications carrier or cable operator who currently occupies rights-of-way without a license, franchise, cable franchise or other agreement with the county. Any such telecommunications carrier or cable operator shall register or apply for a license, franchise or cable franchise as provided by Chs. 12.25 through 12.50 LCC within one hundred twenty days of the effective date of the ordinance codified in Chs. 12.25 through 12.50 LCC.50 LCC.

(2) Chs. 12.25 through 12.50 LCC shall not apply to lessees that solely lease capacity or bandwidth (and do not own telecommunications facilities within the county) so long as the lessor has complied with the requirements of Chs. 12.25 through 12.50. LCC. [Ord. 1171, 2000]

12.25.050 Penalties.

(1) Any person found violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of Chs. 12.25 through 12.50 LCC shall be guilty of a gross misdemeanor. Upon conviction any person violating any provision of Chs. 12.25 through 12.50 LCC shall be subject to a fine of up to five thousand dollars or by

imprisonment for a period of up to one year, or both such fine and imprisonment. A separate and distinct violation shall be deemed committed each day on which a violation occurs or continues.

(2) Civil Penalty. The violation of any provision of this chapter shall be subject to civil penalties under LCC 1.20.040. [Ord. 1180 §18, 2002; Ord. 1171, 2000]

12.25.060 Other remedies.

Nothing in Chs. 12.25 through 12.50 LCC shall be construed as limiting any other remedies that the county may have, at law or in equity, for enforcement of Chs. 12.25 through 12.50 LCC. Notwithstanding the existence or use of any other remedy, the prosecuting attorney's office may seek legal or equitable relief to enjoin any acts or practices and abate any conditions which constitute or will constitute a violation of Chs. 12.25 through 12.50 LCC or other regulations adopted by Chs. 12.25 through 12.50 LCC. [Ord. 1171, 2000]

12.25.070 Administration.

The director is authorized to administer Chs. 12.25 through 12.50 LCC and to establish further rules, regulations and procedures for the implementation of Chs. 12.25 through 12.50 LCC. [Ord. 1171, 2000]

12 25.080 [Reserved.] [Ord. 1171, 2000]

12.25.090 Relationship to other ordinances, policies.

(1) In addition to the provisions of Chs. 12.25 through 12.50, Ch. 12.20 LCC, shall apply to any telecommunications carrier and cable operator who desires to construct, install, operate, maintain, repair or otherwise locate telecommunications facilities or cable facilities on county rights-of-way. The provisions of Chs. 12.25 through 12.50, and Ch. 12.20 LCC shall apply to LCC 5.10.280

through 5.10.370. In the event of a conflict between Chs. 12.25 through 12.50, and Ch. 12.20 LCC, then Ch. 12.20 LCC shall control. In the event of a conflict between LCC 5.10.280 through 5.10.370, and Chs. 12.20 - 12.50 LCC, then Chs. 12.20 - 12.50 LCC shall control.

(2) In addition to the provisions of Chs. 12.25 through 12.50 LCC, any wireless communication facilities shall be subject to applicable zoning and land use regulations and requirements established under Title 17 LCC, and other pertinent Lewis County Code provisions.

(3) Nothing in Chs. 12.25 through 12.50 LCC shall limit or otherwise affect the authority of the county to require a lease for any use, occupation, construction, installation, maintenance or location upon any property owned in fee by the county. [Ord. 1171, 2000]

12.25.100 Acts at grantee's expense.

Any act that a grantee is or may be required to perform under Chs. 12.25 through 12.50 LCC, a license, franchise, cable franchise or applicable law shall be performed at the grantee's expense. [Ord. 1171, 2000]

Chapter 12.30

TELECOMMUNICATIONS REGISTRATION

Sections:

- 12.30.010 Registration required.
- 12.30.020 Purpose of registration.
- 12.30.030 Exception to registration.

12.30.010 Registration required.

Except as provided in Section 12.30.030, all telecommunications carriers having telecommunications facilities and all cable operators within the unincorporated areas of the county, in whole or in part, shall register with the county hereunder on forms provided by the director which shall include the following:

(1) The identity and legal status of the registrant;

(2) The name, address and telephone number of the officer, agent or employee responsible for the accuracy of the registration statement;

(3) A description of registrant's existing or proposed telecommunications facilities within the county;

(4) A description of the telecommunications service that the registrant intends to offer or provide, or is currently offering or providing, to persons, firms, businesses or institutions within the county;

(5) Information sufficient for the county to determine whether the registrant is subject to licensing or franchising under Chs. 12.25 through 12.50 LCC;

(6) Information sufficient for the county to determine whether the transmission, origination or receipt of the telecommunications services provided or to be provided by the registrant constitutes an occupation or privilege subject to any county tax, permit, license or franchise fee;

(7) A statement from the applicant documenting that they have complied with

all WUTC registration and related filings requirements;

(8) A statement from the applicant documenting that any permit, operating license or other right or approvals required by the Federal Communications Commission to provide telecommunications services or facilities has been received and is currently in effect;

(9) Such other information as the county may reasonably require. Should any of the registration information provided under this section change after submittal to the county, the registrant shall notify the county and provide revised information within thirty days of such change. [Ord. 1171, 2000]

12.30.020 Purpose of registration.

The purpose of registration is to:

(1) Provide the county with accurate and current information concerning the telecommunications carriers and cable operators who own or operate telecommunications facilities or cable facilities;

(2) Assist the county in enforcement of Chs. 12.25 through 12.50 LCC; and

(3) Assist the county in the collection and enforcement of any county taxes, franchise or license charges or other charges that may be due to the county. [Ord. 1171, 2000]

12.30.030 Exception to registration.

(1) A person which provides telecommunications services solely to itself, its affiliates or members between points in the same building, or between closely located buildings under common ownership or control; provided, that such person does not use or occupy any rights-of-way of the county or other ways within the county, is excepted from the registration requirements pursuant to Chs. 12.25 through 12.50 LCC;

(2) Telecommunications carriers and cable operators who obtain a license,

franchise or cable franchise under Chs. 12.25 through 12.50, and 5.10 LCC;

(3) Any telecommunications carrier or cable operator with a Lewis County license, franchise or cable franchise existing as of the effective date of Chs. 12.25 through 12.50 LCC. [Ord. 1171, 2000]

Chapter 12.35

TELECOMMUNICATIONS LICENSE

Sections:

- 12.35.010 License.
- 12.35.020 License application.
- 12.35.030 Determination by the county.
- 12.35.040 Agreement.
- 12.35.050 Nonexclusive license.
- 12.35.060 Use granted.
- 12.35.070 Term of license.
- 12.35.080 License route.
- 12.35.090 Construction permits.
- 12.35.100 Service to county users.
- 12.35.110 Amendment of license.
- 12.35.120 Renewal applications.
- 12.35.130 Renewal determinations.
- 12.35.140 Obligation to cure as a condition of renewal.

12.35.010 License.

To the extent permitted by law, a license shall be required of any telecommunications carrier who currently occupies or desires in the future to occupy any rights-of-way with any telecommunications facilities for the purpose of providing telecommunications services exclusively to persons or areas outside the county. [Ord. 1171, 2000]

12.35.020 License application.

Any person that desires a license hereunder shall file an application on a form provided by the director. [Ord. 1171, 2000]

12.35.030 Determination by the county.

Within ninety days after receiving a complete application hereunder, the board shall make a determination on behalf of the county granting or denying the application in whole or in part. If the application is denied, the determination shall include the reasons for denial. The following criteria

shall apply when determining whether to grant or deny the application:

(1) The financial and technical ability of the applicant to fulfill its obligations under a license;

(2) The legal status of the applicant;

(3) The capacity of the rights-of-way to accommodate the applicant's facilities;

(4) The capacity of the rights-of-way to accommodate additional telecommunications facilities and cable facilities if the application is granted;

(5) The damage or disruption, if any, to public or private facilities, improvements, services, travel or landscaping if the application is granted, giving consideration to an applicant's willingness and ability to mitigate and/or repair same;

(6) The public interest in minimizing the cost and disruption of construction within the rights-of-way;

(7) The service that applicant will provide to the region;

(8) The effect, if any, on general public health, safety and welfare in the county's sole opinion if the application is granted;

(9) The availability of alternate routes or locations for the proposed facilities;

(10) Applicable federal, state and local laws, regulations, rules and policies;

(11) Such other factors as may demonstrate that the grant to use the rights-of-way will serve the community interest. [Ord. 1171, 2000]

12.35.040 Agreement.

No license granted hereunder shall be effective until the applicant and the board have executed a written agreement setting forth the particular items and provisions under which the license to occupy and use rights-of-way will be granted. All licenses granted pursuant to Chs. 12.25 through 12.50 LCC shall contain substantially similar terms which, taken as a whole and considering relevant characteristics of applicants, do not provide more or less

favorable terms and conditions than those required of other licensees. [Ord. 1171, 2000]

12.35.050 Nonexclusive license.

No license granted hereunder shall confer any exclusive right, privilege or license to occupy or use the rights-of-way for delivery of telecommunications services or any other purposes. [Ord. 1171, 2000]

12.35.060 Use granted.

(1) No license granted hereunder shall convey any right, title or interest in rights-of-way but shall be deemed a license only to use and occupy the rights-of-way for the limited purposes and term stated in the grant.

(2) No license granted hereunder shall authorize or excuse a licensee from securing such further easements, leases, permits or other approvals as may be required to lawfully occupy and use rights-of-way.

(3) No license granted hereunder shall be construed as any warranty of title. [Ord. 1171, 2000]

12.35.070 Term of license.

Unless otherwise specified in a license agreement, a license granted hereunder shall be in effect for a term of not more than five years. [Ord. 1171, 2000]

12.35.080 License route.

A license granted hereunder shall be limited to a grant of specific rights-of-way and defined portions thereof, as may be indicated in the license agreement. [Ord. 1171, 2000]

12.35.090 Construction permits.

All licensees are required to obtain construction permits and pay all fees as required by the county; provided, however, that nothing in Chs. 12.25 through 12.50

LCC shall prohibit the county and a licensee from agreeing

to alternative plan review, permit and construction procedures in a license agreement, and further provided that such alternative procedures provide substantially equivalent safeguards for reasonable construction practices. [Ord. 1171, 2000]

12.35.100 Service to county users.

A licensee may be permitted to offer or provide telecommunications services or cable services to persons or areas within the county upon submitting an application for franchise approval and upon obtaining a franchise pursuant to Chs. 12.25 through 12.50 LCC, or Ch. 5.10 LCC. [Ord. 1171, 2000]

12.35.110 Amendment of license.

(1) The licensee shall apply for an amendment to an existing license when it desires to extend or locate its telecommunications facilities in rights-of-way which are not included in a license previously granted hereunder or when it provides services beyond those authorized in the license.

(2) The county shall grant a license amendment without further application, if the county orders a telecommunications carrier to locate or relocate its telecommunications facilities in rights-of-way not included in a previously granted license. [Ord. 1171, 2000]

12.35.120 Renewal applications.

A licensee that desires to renew its license hereunder shall, not more than one hundred eighty days nor less than ninety days before expiration of the current license, file an application with the county for renewal of its license which shall include the following information:

(1) The applicable information required pursuant to the license application;

(2) Any other information required by the county. [Ord. 1171, 2000]

12.35.130 Renewal determinations.

Within ninety days after receiving a complete application hereunder, the board shall make a determination on behalf of the county granting or denying the renewal application in whole or in part. If the renewal application is denied, the termination shall include the reasons for nonrenewal. The criteria enumerated in Section 12.35.030 shall apply when determining whether to grant or deny the application, and may further consider the applicant's compliance with the requirements of Chs. 12.25 through 12.50 LCC and the license agreement. [Ord. 1171, 2000]

12.35.140 Obligation to cure as a condition of renewal.

No license shall be renewed until any ongoing violations or defaults in the licensee's performance of the license agreement, of the requirements of Chs. 12.25 through 12.50 LCC, and all applicable laws, statutes, codes, ordinances, rules and regulations have been cured, or a plan detailing the corrective action to be taken by the licensee has been approved by the director. Failure to comply with the terms of an approved plan shall be grounds for nonrenewal or revocation of the license. [Ord. 1171, 2000]

Chapter 12.37

TELECOMMUNICATIONS FRANCHISE

Sections:

- 12.37.010 Franchise.
- 12.37.020 Franchise application.
- 12.37.030 Determination by the county.
- 12.37.040 Agreement.
- 12.37.050 Nonexclusive franchise.
- 12.37.060 Use granted.
- 12.37.070 Term of franchise.
- 12.37.080 Franchise territory.
- 12.37.090 Construction permits.
- 12.37.100 Nondiscrimination.
- 12.37.110 Amendment of franchise.
- 12.37.120 Renewal applications.
- 12.37.130 Renewal determinations.
- 12.37.140 Obligation to cure as a condition of renewal.

12.37.010 Franchise.

To the extent permitted by law, a franchise shall be required of any telecommunications carrier who currently occupies or desires in the future to occupy rights-of-way and to provide telecommunications services to any person or area in the county. [Ord. 1171, 2000]

12.37.020 Franchise application.

Any person that desires a franchise hereunder shall file an application provided on a form by the director. [Ord. 1171, 2000]

12.37.030 Determination by the county.

Within one hundred twenty days after receiving a complete application hereunder, the board shall make a determination granting or denying the application in whole or in part. If the application is denied, the determination shall include the reasons for denial. The criteria enumerated in Section 12.35.030 shall apply when determining

whether to grant or deny the application. [Ord. 1171, 2000]

12.37.040 Agreement.

(1) No franchise shall be granted hereunder unless the applicant and the board have executed a written agreement setting forth the particular terms and provisions under which the franchise to occupy and use rights-of-way will be granted.

(2) All franchises granted pursuant to Chs. 12.25 through 12.50 LCC shall contain substantially similar terms and conditions which, taken as a whole and considering relevant characteristics of the applicants, do not provide more or less favorable terms and conditions than those required of other franchisees. [Ord. 1171, 2000]

12.37.050 Nonexclusive franchise.

No franchise granted hereunder shall confer any exclusive right, privilege or franchise to occupy or use the rights-of-way for delivery of telecommunications services or any other purposes. [Ord. 1171, 2000]

12.37.060 Use granted.

(1) No franchise granted hereunder shall convey any right, title or interest in the rights-of-way but shall be deemed a franchise only to use and occupy the rights-of-way for the limited purposes and term stated in the grant.

(2) No franchise granted hereunder shall authorize or excuse a franchisee from securing such further easements, leases, permits or other approvals as may be required to lawfully occupy and use rights-of-way.

(3) No franchise granted hereunder shall be construed as any warranty of title. [Ord. 1171, 2000]

12.37.070 Term of franchise.

Unless otherwise specified in a franchise agreement, a telecommunications franchise

granted hereunder shall be valid for a term of not more than ten years. [Ord. 1171, 2000]

12.37.080 Franchise territory.

A telecommunications franchise granted hereunder may be limited to the specific geographic area of the county to be served by the franchisee, and the specific rights-of-way and portions thereof, as may be identified in the franchise agreement. [Ord. 1171, 2000]

12.37.090 Construction permits.

All franchisees are required to obtain permits and pay all costs for telecommunications facilities and cable facilities as required by the county; provided, however, that nothing in Chs. 12.25 through 12.50 LCC, nor Ch. 5.10 LCC shall prohibit the county and a franchisee from agreeing to alternative plan review, permit and construction procedures in a franchise agreement, and further provided that such alternative procedures provide substantially equivalent safeguards for responsible construction practices. [Ord. 1171, 2000]

12.37.100 Nondiscrimination.

A franchisee shall make its telecommunications services available to any customer within its franchise area who shall request such service, without discrimination, except as permitted by law, as to the terms, conditions, rates or charges for franchisee's services; provided, however, that nothing in Chs. 12.25 through 12.50 LCC shall prohibit a franchisee from making any reasonable classifications among differently situated customers. [Ord. 1171, 2000]

12.37.110 Amendment of franchise.

(1) The franchisee shall apply for an amendment to an existing franchise when a telecommunications carrier desires to extend

its franchise territory or to locate its telecommunications facilities in rights-of-way which are not included in a franchise previously granted hereunder or when it desires to offer services beyond those authorized in the franchise.

(2) The county shall grant a franchise amendment without further application if the county orders a telecommunications carrier to locate or relocate its telecommunications facilities in rights-of-way not included in a previously granted franchise. [Ord. 1171, 2000]

12.37.120 Renewal applications.

A franchisee that desires to renew its franchise hereunder shall, not more than one hundred eighty days nor less than one hundred twenty days before expiration of the current franchise, file an application with the county for renewal of its franchise which shall include the following information:

(1) The applicable information required pursuant to the franchise application; and

(2) Any other information required by the county. [Ord. 1171, 2000]

12.37.130 Renewal determinations.

Within one hundred twenty days after receiving a complete application hereunder, the board shall make a determination on behalf of the county granting or denying the renewal application in whole or in part. If the renewal application is denied, the determination shall include the reasons for nonrenewal. The criteria enumerated in Section 12.35.030 shall apply when determining whether to grant or deny the application, and may further consider the applicant's compliance with the requirements of Chs. 12.25 through 12.50 LCC, and the franchise agreement. [Ord. 1171, 2000]

12.37.140 Obligation to cure as a condition of renewal.

No franchise shall be renewed until any ongoing violations or defaults in the franchisee's obligations under the franchise agreement, the requirements of Chs. 12.25 through 12.50 LCC, and all applicable laws, statutes, codes, ordinances, rules and regulations have been cured, or a plan detailing the corrective action to be taken by the franchisee has been approved by the director. Failure to comply with the terms of an approved plan shall be grounds for nonrenewal or immediate revocation of the franchise. [Ord. 1171, 2000]

Chapter 12.40

CONDITIONS FOR USE OF RIGHTS-OF-WAY

Sections:

- 12.40.005 Applicability.
- 12.40.010 General duties.
- 12.40.020 Removal of unauthorized facilities.
- 12.40.030 Facilities maps.
- 12.40.040 Duty to provide information.
- 12.40.050 Grantee insurance.
- 12.40.060 Release, indemnity and hold harmless.
- 12.40.070 Security fund.
- 12.40.080 Assignments or transfers.
- 12.40.090 Transactions affecting control.
- 12.40.100 Revocation or termination.
- 12.40.110 Notice and duty to cure.
- 12.40.120 Hearing.
- 12.40.130 Standards for revocation or lesser sanctions.

12.40.005 Applicability.

The terms of this Chapter 12.40, conditions for use of rights-of-way, and the Ch. 12.20 LCC shall apply to all grantees. [Ord. 1171, 2000]

12.40.010 General duties.

(1) All grantees, before commencing any construction in the rights-of-way, shall comply with all requirements of the Lewis County Code or other ordinances of the county.

(2) All grantees shall have no ownership rights in rights-of-way, even though they may be granted a license, franchise or cable franchise to construct or operate their facilities. [Ord. 1171, 2000]

12.40.020 Removal of unauthorized facilities.

(1) In its discretion, the director at any time may require any person who owns, controls or maintains any unauthorized telecommunications facility or cable facility or related appurtenances within the rights-of-way to:

(a) Apply for a license, franchise or cable franchise within thirty days of receipt of written notice from the county to such person that such a license, franchise or cable franchise is required; or

(b) Require such person to remove all facilities and restore the affected area within ninety days to a condition satisfactory to the county; or

(c) Direct county personnel to remove the facilities and restore the affected area to a condition satisfactory to the county and charge the person the costs therefor, including by placing a lien on the person's property; or

(d) Take any other action authorized by applicable law.

(2) A telecommunications facility or cable facility is unauthorized and subject to removal in the following circumstances:

(a) Upon expiration or termination of the grantee's license, franchise or cable franchise unless otherwise provided by law;

(b) Upon abandonment of a facility within the rights-of-way;

(c) If the facility was constructed or installed without the prior issuance of a required encroachment, utility or other permit;

(d) If the facility was constructed or installed at a location not permitted by the grantee's license, franchise or cable franchise;

(e) To the extent permitted by law, any such other reasonable circumstances affecting public health, safety and welfare deemed necessary by the director.

(3) Notwithstanding any other provision of this section, the director may, in its sole discretion, allow a grantee or other person who may own, control or maintain

telecommunications facilities or cable facilities within the rights-of-way of Lewis County to abandon such facilities in place. No facilities of any type may be abandoned in place without the express written consent of the director. Any plan for abandonment or removal of such facilities must be first approved by the director and all necessary permits must be obtained prior to commencement of such work. Upon permanent abandonment of any telecommunications facilities or cable facilities of such persons in place, the facilities shall become the property of the county, and such persons shall submit to the director an instrument in writing, to be approved by the prosecuting attorney's office, transferring ownership of such facilities to the county. The provisions of this section shall survive the expiration, revocation or termination of any license, franchise or cable franchise granted under Chs. 12.25 through 12.50, and Ch. 5.10 LCC. [Ord. 1171, 2000]

12.40.030 Facilities maps.

Upon request by the director, the grantee shall provide the county with maps in a format agreed to by the grantee and the county, identifying the location of all telecommunications facilities and cable facilities within the rights-of-way except individual service connections. [Ord. 1171, 2000]

12.40.040 Duty to provide information.

Within ten days of a written request from the director, each grantee shall furnish the director with information reasonably necessary to fulfill purposes of Chs. 12.25 through 12.50 LCC and sufficient to demonstrate:

(1) That grantee has complied with all requirements of Chs. 12.25 through 12.50 LCC;

(2) That all taxes and fees due the county in connection with the

telecommunications services and telecommunications facilities or cable services and cable facilities provided by the grantee have been properly collected and paid by the grantee;

(3) That all books, records, maps and other documents maintained by the grantee with respect to its facilities within the rights-of-way have been made available for inspection by the director and the director at reasonable times and intervals. [Ord. 1171, 2000]

12.40.050 Grantee insurance.

Unless otherwise provided by a license, franchise or cable franchise, before commencing construction in the rights-of-way, each grantee shall secure and maintain the following liability insurance policies:

(1) Commercial general liability insurance, and if necessary, umbrella liability insurance, which will cover bodily injury, property damage, and any other exposure which can be reasonably identified as potentially arising from the grantee's activities within the rights-of-way. The limit of liability shall not be less than two million dollars each occurrence. The county, its elected and appointed officers, officials, employees, agents and representatives shall be named as additional insureds with respect to activities occurring within its rights-of-way. Coverage shall be comprehensive with respect to the grantee's activities within the rights-of-way and shall include completed operations, explosions, collapse and underground hazards;

(2) Business automobile liability insurance for owned, nonowned and hired vehicles with limits of not less than two million dollars per person, three million dollars per accident;

(3) Workers' Compensation insurance as required by Title 51 RCW and employers liability coverage with a limit of not less than one million dollars per occurrence;

(4) The insurance policies required by this section shall be maintained at all times by the grantee. Each liability policy shall be endorsed to require the insurer to notify the county at least forty-five days before the policy can be canceled by either party, and to require notice of cancellation due to nonpayment of premium to be mailed to the director as well as the named insured. The grantee will be obligated to replace or renew the canceled or expiring policy and show proof in the form of a certificate of insurance, at least twenty days before the expiration or cancellation of the existing policy(s);

(5) The grantee shall furnish the county with properly executed certificates of insurance or a signed policy endorsement which shall clearly evidence all insurance required in this section. The certificate will, at a minimum, list limits of liability, coverage and all exclusions;

(6) The grantee or its agent will provide a copy of any and all insurance policies specified in Chs. 12.25 through 12.50 LCC upon request of the director;

(7) The insurance limits mandated for any insurance coverage required by Chs. 12.25 through 12.50 LCC are not intended to be an indication of limits of exposure nor are they limitations on liability or indemnification. [Ord. 1171, 2000]

12.40.060 Release, indemnity and hold harmless.

(1) In addition to and distinct from the insurance requirements of Chs. 12.25 through 12.50 LCC, grantee releases and shall defend, indemnify and hold harmless county, its elected and appointed officers, officials, employees, agents and representatives (collectively referred to as the "indemnitees") from any and all claims, losses, costs, liabilities, damages and expenses, including, but not limited to, those of the grantee's lessees, and also including, but not limited to, reasonable attorneys' fees

(except those damages caused solely by the negligence of the indemnitees) arising out of or in connection with the telecommunications facilities or cable facilities or installation of any telecommunications facilities or cable facilities, the performance of any work, the operation of any telecommunications facilities or cable facilities, or the grantee's system, or the acts or omissions of the grantee or any of its suppliers or contractors of any tier, or anyone acting on the grantee's behalf in connection with such installation of telecommunications facilities or cable facilities, performance of work, or operation of telecommunications facilities or cable facilities or grantee's system.

(2) Such indemnity, protection and hold harmless shall include any demand, claim, suit or judgment for damages to property or injury to or death of persons, including officers, agents and employees of any person including payment made under or in connection with any Work's Compensation Law or under any plan for employees' disability and death benefits, which may arise out of or be caused or contributed to directly or indirectly by the erection, maintenance, presence, operation, use or removal of grantee's telecommunications facilities or cable facilities or installations of telecommunications facilities or cable facilities including any claims or demands of customers of the grantee with respect thereto.

(3) Indemnitees shall not be liable to the grantee or to the grantee's customers, and the grantee indemnifies, protects and saves harmless the indemnitees against any and all such claims or demands, suit or judgment for loss, liability, damages and expense by the grantee's customers, or for any interruption to the service of the grantee, or for interference with the operation of the telecommunications facilities or cable facilities.

(4) To the fullest extent permitted by applicable law, the foregoing release, indemnity and hold harmless provisions shall apply to and be for the benefit of the indemnitees.

(5) All provisions of Section 12.40.060 shall apply to the successors and assigns of the grantee. [Ord. 1171, 2000]

12.40.070 Security fund.

(1) Before commencing construction or obtaining a license or franchise, or cable franchise under Ch. 5.10 LCC, in the county rights-of-way, each grantee shall establish a permanent security fund with the county by depositing the amount of up to fifty thousand dollars with the county in cash, an unconditional letter of credit, or other instrument acceptable to the county, which fund shall be maintained in the designated amount at the sole expense of grantee so long as any of the grantee's telecommunications facilities or cable facilities are located within the rights-of-way. This security fund shall be separate and distinct from any other bond, letter of credit or deposit required by a telecommunications franchise or cable franchise. If a grantee has telecommunications facilities or cable facilities in the rights-of-way for five consecutive years, the grantee may request the county to waive the requirement for a security fund.

(2) The fund shall serve as security for the full and complete performance of grantee's obligations under Chs. 12.25 through 12.50 LCC, including any costs, expenses, damages or loss the county pays or incurs because of any failure attributable to the grantee to comply with the codes, ordinances, rules, regulations or permits of the county.

(3) Before any sums are withdrawn from the security fund, the Director shall give written notice to the grantee:

(a) Describing the act, default or failure to be remedied, or the damages, cost or

expenses which the county has incurred by reason of the grantee's act or default;

(b) Providing a reasonable opportunity for the grantee to first remedy the existing or ongoing default or failure;

(c) Providing a reasonable opportunity for the grantee to pay any moneys due the county before the county withdraws the amount thereof from the security fund; and

(d) That the grantee will be given an opportunity to review the act, default or failure described in the notice with the director.

(4) Grantee shall replenish the security fund within fourteen days after the mailing date of written notice from the director that there is a deficiency in the amount of the fund. [Ord. 1171, 2000]

12.40.080 Assignments or transfers.

(1) Ownership or control of a license, franchise or cable franchise may not directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger or consolidation, by operation of law or otherwise, nor may there be a transfer of working control (which includes not only actual control, but also the ability to affect or influence decisions) without the prior written consent of the county, as expressed by ordinance and then on such conditions as may be prescribed therein and:

(a) No grant with respect to a telecommunications service shall be assigned or transferred in any manner within twelve months after the initial grant of the license or franchise unless otherwise provided by law.

(b) Absent extraordinary and unforeseeable circumstances and to the extent permitted by law, no grant with respect to a telecommunications service shall be assigned or transferred before

construction of the telecommunications facilities have been completed.

(c) The proposed assignee or transferee shall provide and certify the following information to the director:

(i) Complete information setting forth the nature, terms and conditions of the proposed transfer or assignment;

(ii) All information required of a license, franchise or cable franchise applicant pursuant to Chs. 12.25 through 12.50 LCC with respect to the proposed transferee or assignee;

(iii) All information required by federal, state and local law or regulation, including, but not limited to, FCC Form 394;

(iv) Any other information reasonably required by the director.

(2) No transfer shall be approved unless the assignee or transferee has the legal, technical, financial and other qualifications in the county's reasonable discretion to own, hold and operate the telecommunications system pursuant to Chs. 12.25 through 12.50 LCC, and unless there is compliance with the license, franchise and cable franchise (as applicable).

(3) The assignee or transferee shall reimburse the county for all direct and indirect costs and expenses incurred by the county in considering a request to transfer ownership in or assign a license, franchise or cable franchise unless otherwise prohibited by law.

(4) Any transfer of ownership in or assignment of a license, franchise or cable franchise without prior approval of the county under Chs. 12.25 through 12.50 LCC shall be void and is cause for revocation of the grant.

(5) Upon receipt of all information required in Chs. 12.25 through 12.50 LCC, and any other information reasonably required by the county, the county shall have one hundred twenty days to review and approve or deny the requested assignment or

transfer. If the county is unable to approve or deny the requested assignment or transfer within such period, the county shall provide notice of the reasons for the delay and the period of time needed to complete its review, and such review period shall be extended to the extent permitted by law.

(6) In addition to the other requirements in Chs. 12.25 through 12.50 LCC, a copy of the transfer or assignment document, deed and other documentation deemed necessary by the county shall also be filed with the director within ten days of any change in ownership or control.

(7) Except as provided in Section 12.40.090 below, county's consent shall not be required for any assignment which is the result of a corporate merger, sale of all or substantially all of the corporate assets, sale of any or all of the corporate stock, consolidation or reorganization, whether voluntary or involuntary, or assignment to a subsidiary, parent or affiliated company so long as such assignee or transferee is financially qualified and there are no outstanding issues of noncompliance under Chs. 12.25 through 12.50 LCC, a license, franchise, or cable franchise. Nothing contained in Chs. 12.25 through 12.50 LCC shall prevent or restrict an assignor's, lessor's, or person's right to (1) mortgage its interest; or (2) assign or lease to a third party fiber optic cables or telecommunication capacity (so long as it is for uses authorized by telecommunications franchises or cable franchises), and no consent shall be required for such mortgage, lease or assignment. Such assignors and lessors shall, however, be responsible for written notification to county of such assignment or lease due to those occurrences defined in Chs. 12.25 through 12.50 LCC in which county's consent is not required, and such notification shall include the appropriate names, address and contact points for the assignee or lessee. [Ord. 1171, 2000]

12.40.090 Transactions affecting control.

Any transaction which results in any change of the ownership or in any manner of the working control, of the ownership or working control of a licensee or franchisee, of the ownership or working control of affiliated entities having ownership or working control (defined as twenty percent or more ownership or control), including, but not limited to, a change of twenty percent or more of change in financial ownership or make up or the nature of the business entity, shall be considered an assignment or transfer requiring county approval hereunder. [Ord. 1171, 2000]

12.40.100 Revocation or termination.

A license, franchise or cable franchise granted by the county to use or occupy rights-of-way may be revoked for any one or more of the following reasons:

- (1) Construction or operation at an unauthorized location;
- (2) Unauthorized transfer of control;
- (3) Unauthorized assignment of a license, franchise or cable franchise;
- (4) Misrepresentation in any application to the county;
- (5) Abandonment of telecommunications facilities or cable facilities in the rights-of-way;
- (6) Failure to relocate or remove telecommunications facilities or cable facilities as required in Chs. 12.25 through 12.50, and 5.10 LCC;
- (7) Failure to pay taxes, compensation, fees or costs when and as due the county;
- (8) Insolvency or bankruptcy;
- (9) Violation of a material provision of Chs. 12.25 through 12.50, and 5.10 LCC;
- (10) Violation of a material term of a license, franchise or cable franchise. [Ord. 1171, 2000]

12.40.110 Notice and duty to cure.

In the event that the director believes that grounds exist for revocation of a license, franchise or cable franchise, written notice shall be given of the apparent violation or noncompliance, there shall be provided a short and concise statement of the nature and general facts of the violation or noncompliance, and there shall be given a reasonable period of time not exceeding thirty days to furnish evidence:

(1) That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance;

(2) That rebuts the alleged violation or noncompliance;

(3) That it would be in the public interest to impose some monetary damages, penalty or sanction less than revocation. [Ord. 1171, 2000]

12.40.120 Hearing.

(1) In the event that a grantee fails to provide evidence reasonably satisfactory to the director as provided hereunder, the director shall make a preliminary determination as to whether an event of default by grantee has occurred and initially prescribe remedies in accordance with Section 12.40.130. In the event that a grantee wants to appeal such determination, it shall do so to the hearing examiner, who shall conduct an open appeals hearing pursuant to Chapter 2.25 LCC. In the event a further appeal is sought by the grantee, it may make such further appeal as may be provided for at law in the Lewis County Superior Court.

(2) With respect to apparent violations or noncompliance provided for in Chs. 12.25 through 12.50 LCC, appeals to the hearing examiner shall be made within fourteen days of the preliminary determination of default by the director, and after notice and opportunity to cure as referred to in Section 12.40.110. [Ord. 1171, 2000]

12.40.130 Standards for revocation or lesser sanctions.

If persuaded that the grantee has violated or failed to comply with a material provision of Chs. 12.25 through 12.50 LCC or of a license, franchise, cable franchise or applicable codes, ordinances, statutes, or rules and regulations, the director shall make a preliminary determination whether to revoke the license, franchise or cable franchise, and issue a written order, or to impose monetary damages, a penalty, or other such lesser sanction and cure, considering the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:

- (1) Whether the misconduct was egregious;
- (2) Whether substantial harm resulted;
- (3) Whether the violation was intentional;
- (4) Whether there is a history of prior violations of the same or other requirements;
- (5) Whether there is a history of overall compliance;
- (6) Whether the violation was voluntarily disclosed, admitted or cured. [Ord. 1171, 2000]

Chapter 12.45

CONSTRUCTION STANDARDS

Sections:

- 12.45.010 Construction standards.
- 12.45.020 Construction codes.
- 12.45.030 Utility permits.
- 12.45.040 Location of telecommunications and cable facilities.
- 12.45.050 Occupancy of county owned conduit.

12.45.010 Construction standards.

No person shall commence or continue with the construction, installation or operation of telecommunications facilities or cable facilities within the county except as provided in Chs. 12.25 through 12.50 LCC; provided, however, this Chapter shall be in addition to the requirements of Ch. 12.20 LCC, as enacted or in the future as amended from time to time. [Ord. 1171, 2000]

12.45.020 Construction codes.

Telecommunications facilities and cable facilities shall be constructed, installed, operated and maintained in accordance with all applicable federal, state and local codes, rules and regulations including, but not limited to, the National Electrical Safety Code. Telecommunications facilities and cable facilities shall comply with the most recent standards in Ch. 12.20 LCC, other public works standards, and applicable county codes and policies. [Ord. 1171, 2000]

12.45.030 Utility permits.

No person shall construct or install any telecommunications facilities or cable facilities within the rights-of-way without a utility permit, as provided under Ch. 12.20 LCC; provided, however:

(1) No permit shall be issued for the construction or installation of telecommunications facilities or cable facilities within the county unless the telecommunications carrier has filed a registration statement with the county pursuant to Chs. 12.25 through 12.50 LCC;

(2) No permit shall be issued for the construction or installation of telecommunications facilities or cable facilities in the rights-of-way unless the grantee has applied for and received a license, franchise or cable franchise pursuant to Chs. 12.25 through 12.50 LCC to the extent the foregoing may be required under applicable law;

(3) Unless otherwise provided by a license, franchise, cable franchise or law, no permit shall be issued for the construction or installation of telecommunications facilities or cable facilities without payment of all charges pursuant to Chs. 12.25 through 12.50 LCC. [Ord. 1171, 2000]

12.45.040 Location of telecommunications and cable facilities.

Unless otherwise required in current or future county ordinances regarding underground construction requirements, all telecommunications facilities and cable facilities shall be constructed, installed and located in accordance with the following terms and conditions:

(1) A grantee with written authorization to install overhead facilities shall install its telecommunications facilities and cable facilities on pole attachments to existing utility poles only, and then only if surplus space is available.

(2) Whenever all existing telephone, electric utilities, cable facilities or telecommunications facilities are located underground within rights-of-way, a grantee with written authorization to occupy the same rights-of-way must also locate its

telecommunications facilities and cable facilities underground.

(3) Whenever all new or existing telephone, electric utilities, cable facilities and telecommunications facilities are located or relocated underground within rights-of-way, a grantee that currently occupies the same rights-of-way shall concurrently relocate its facilities underground at its expense. [Ord. 1171, 2000]

12.45.050 Occupancy of county owned conduit.

If the county owns or leases conduit in the path of grantee's proposed telecommunications facilities, and provided it is technologically and economically feasible for grantee to occupy the conduit owned or leased by the county (and provided that grantee does not require a different path due to a legitimate need to achieve redundancy), grantee shall be required to occupy the conduit owned or leased by the county in order to reduce the necessity to excavate the rights-of-way. Grantee shall pay compensation to the county for such occupancy calculated pursuant to the federal formula for conduit leases, or a mutually agreeable rate if no such formula exists. [Ord. 1171, 2000]

Chapter 12.50

COMPENSATION AND DEPOSITS

Sections:

- 12.50.005 Applicability.
- 12.50.010 Registration deposit.
- 12.50.020 Application deposit
- 12.50.030 Refund.
- 12.50.040 Other county costs.
- 12.50.050 Compensation to county.
- 12.50.060 Utility permit deposit.
- 12.50.070 Annual deposit.
- 12.50.080 Regulatory costs and compensation not a tax.

12.50.005 Applicability.

This Chapter 12.50 shall constitute the compensation structure and deposit requirements for the Lewis County telecommunications ordinance, subject to resolutions adopted from time to time by the board, and to the extent permitted by law. [Ord. 1171, 2000]

12.50.010 Registration deposit.

Each application for registration shall be accompanied by a deposit, if so established under the most current schedule on file at the Lewis County Department of Public Works. [Ord. 1171, 2000]

12.50.020 Application deposit.

Prior to the acceptance of an application by the county for a license, franchise or cable franchise, or renewal thereof, applicants shall pay to the county an application deposit, if so established under the most current schedule on file at the Lewis County Department of Public Works, which shall be deposited in an escrow account. The purpose of the application deposit is to ensure full recovery of actual county costs and expenses associated with the review of the application including, but not limited to, actual costs of county staff

time and resources as well as any outside consultation expenses which the county reasonably determines are necessary to adequately review and analyze the application. The application deposit shall be credited towards other costs or deposits due to the county and billed to the applicant or grantee, less any ascertainable costs and expenses incurred by the county in connection with the application. To the extent that the initial deposit is insufficient to fund full recovery of county costs and expenses, within thirty days after billing, the applicant shall reimburse the county. [Ord. 1171, 2000]

12.50.030 Refund.

Any application deposit funds remaining after issuance of the license, franchise or franchise, or renewal thereof, shall be credited toward permit administration and monitoring costs, or refunded to the applicant. An applicant whose license, franchise or cable franchise application has been withdrawn, abandoned or denied shall, within one hundred twenty days of its application and review deposit, be refunded the balance of its deposit under this section, less all ascertainable costs and expenses incurred by the county in connection with the application.

12.50.040 Other county costs.

All grantees shall, within ten days after receiving a billing, reimburse the county for all direct and indirect costs and expenses incurred by the county in connection with any compliance review, or modification, amendment or transfer of a license, franchise or cable franchise. [Ord. 1171, 2000]

12.50.050 Compensation to county.

The licensee, franchisee, cable franchisee or lessee of the county shall pay to the county a fair and reasonable compensation for the authorization granted.

The county and the licensee, franchisee, cable franchisee or lessee of the county may agree upon the form of such compensation in a lease, license, franchise, cable franchise, or other authorization which may include more favorable rates or free service, the provision of in-kind services, equipment and facilities, or any combination thereof in partial satisfaction or in lieu of other obligations of the licensee, franchisee, cable franchisee or lessee of the county. Unless otherwise established by such agreement, or by a lease, license, franchise, cable franchise, or other authorization, the amount of such compensation shall be established under the most current schedule on file at the Lewis County Department of Public Works. [Ord. 1171, 2000]

12.50.060 Utility permit deposit.

Prior to issuance of a utility permit, the applicant shall pay a permit deposit to allow for recovery the county's actual attributable costs and expenses. The amount of the utility permit deposit shall be established under the most current schedule on file at Lewis County Department of Public Works. [Ord. 1171, 2000]

12.50.070 Annual deposit.

In addition to other compensation provided for or referred to in Chs. 12.25 through 12.50 LCC; the county reserves the right to require each licensee, franchisee, cable franchisee or lessee of the county to pay an annual deposit to the county to reimburse the county's costs in connection with administration and oversight of the license, franchise, cable franchise, permit, lease or other authorization, and in connection with reviewing, inspecting, monitoring and supervising the use and occupancy of the rights-of-way, which amounts may be established by the board or specified in the license, franchise, cable franchise, permit, lease or other authorization. [Ord. 1171, 2000]

12.50.080 Regulatory costs and compensation not a tax.

The regulatory compensation and costs provided for or referred to in Chs. 12.25 through 12.50 LCC; and any compensation charged and paid for the rights-of-way, are separate from, and additional to, any and all federal, state, and local and county taxes as may be levied, imposed or due from a grantee, its customers or subscribers, or on account of the lease, sale, delivery or transmission of telecommunications services or cable services.

[Ord. 1171, 2000]